Before the
Federal Communications Commission
Washington, D.C., 20554

In the Matter of	)	
	)	
Implementation of Section 224 of the Act;	)	**WC Docket No. 07-245**
Amendment of the Commission's Rules	)	
and Policies Governing Pole Attachments	)	
	)	**RM-11293**
	)	**RM-11303**
	)	

ONCOR ELECTRIC DELIVERY COMPANY'S REPLY COMMENTS

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REPLY COMMENTS

Oncor Electric Delivery Company ("Oncor") submits these Reply Comments regarding the above-styled Notice of Proposed Rulemaking (Implementation of Section 224 of the Act; Amendment of Commission's Rules and Policies Governing Pole Attachments, Notice of Proposed Rulemaking, FCC 07-187, 22 FCC Rcd 20195 (2007) ("NPRM")). Oncor's Reply Comments focus on the safety and reliability of its critical electric infrastructure and the need to maintain utility and state public service commission authority over these extremely local matters.

I. Introduction and Summary

Various comments filed by attaching entities address safety and reliability as part of an economic equation designed to enhance their speed to market. They provide little to no evidence to justify their self-serving assertions. Instead, relying on nothing more than sweeping statements, they urge the Commission to reject "safety" claims made by the utilities. The Commission's answer should be simple: speed to market *never* overrides the safety and reliability considerations inherent in the delivery of retail electric service. Regardless of the laudability of delivering cable, telecommunication and/or broadband services to the masses, the safety and reliability of electric distribution networks cannot be the price.

Oncor urges the Commission to reject the ill-conceived invitation of attaching entities to go where the Commission has not gone before by adopting a "one size fits all" set of pole attachment construction and engineering "best practices." Safety, reliability and engineering standards vary considerably from region to region, state to state and utility to utility. The variances are based on a host of factors including, without limitation, weather

patterns, topography and soil content. Prior to, and since, the inception of Section 224 of the Communications Act (the "Act"), these localized issues have been the province of the electric utilities themselves, as regulated by their respective state public service commissions. Consistent with the Act, the Commission has kept its focus limited to the rates, terms and conditions of pole attachment agreements. While the Commission's *ad hoc* review for discriminatory treatment remains in place, the historic and statutory utility and state authority over safety and reliability should remain as well. *See, e.g., Southern Company v. FCC*, 293 F.3d 1338, 1344 (11th Cir. 2002) ("[T]he Federal Power Act explicitly divests the FERC of regulatory jurisdiction 'over facilities used for the generation of electric energy or over facilities used in local distribution.' **This provision recognizes the essentially local character of distribution facilities and systems,** as opposed to the primarily interstate character of electric transmission facilities. Regulation of the latter was to be implemented by the FERC, while **regulation of the former was to be left primarily in the hands of state and local authorities.** This bifurcated regulatory scheme is indicative of the accepted and fundamental distinction between a utility's transmission plant and its distribution plant.") (emphasis added). The Commission's charge from Congress was to "institute a simple and expeditious CATV pole attachment program which will necessitate a minimum of staff, paperwork and procedures consistent with fair and efficient regulation." S. Rep. No. 95-580, 95th Cong., 1st Sess. at 21 (1977). Injecting the Commission into the complexities, nuances and localized issues of safety and reliability is contrary to this charge.

In contrast to the approach taken by attachers, Oncor and many other electric utilities submitted actual data demonstrating that the safety and reliability concerns created by third-party attachers not only exist, but are extremely common and reoccurring. The electric utilities also explained why a blanket set of so-called "best practices" is unworkable and would hand-cuff their ability to ensure that their respective distribution systems are safe and reliable. The electric utilities have submitted the better case. In the areas of safety and reliability, the Commission should maintain the *status quo* by deferring to private agreements and local regulation.

II. Third-Party Attachers Create Safety and Reliability Problems

Some attachers argue that the safety and reliability claims made by the electric utilities are exaggerated. Comcast Corporation ("Comcast"), for example, states that the Commission should not be "swayed by claims that cable threatens the safety of the pole infrastructure" and alleges that the pole owners are employing "scare tactics."[1] Time Warner Cable ("TWC") claims that the electric utilities have "trumped up" charges that CATV operators cause safety violations and have only "anecdotal" evidence of "occasional" violations and safety concerns created by third-party attachers.[2] TWC goes so far as to proclaim that the pole owners themselves are "frequently responsible for creating wholesale violations on their poles."[3] These statements are long on rhetoric, but devoid of fact. Also, Time Warner Telecom ("TWTC"), standing on rhetoric alone, urges

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1 *See* Initial Comments filed by Comcast, p. vi and Exhibit 3, p.2.

2 *See* Initial Comments filed by TWC, pp. iv, 54.

3 *See id.* at p. iv.

the Commission to "reject pole owners' overblown claims that the rule changes proposed by Fibertech pose significant safety risks."[4]

As explained in detail in Oncor's initial comments, Oncor launched a system-wide Safety and Compliance Audit ("Compliance Audit") in April 2004. The Audit was a direct response to the discovery of excessive safety violations during Oncor's attachment permitting process and the revelation that a large number of attachers had put their facilities on Oncor's poles without authorization or pre-engineering.[5] Of the 102,548 poles inspected, there were violations of NESC and/or Oncor's Construction Standards and Specifications on 30,764 poles.[6] The Compliance Audit revealed 52,404 total violations, 48,547 (92%) of which were created by third-party attachers.[7] In contrast, only 3,857 (7.4%) of the existing violations were created by Oncor.[8] As evidenced by these percentages, while Oncor is not immune to human error, and is, therefore, by no means perfect, the number of violations created by third-party attachers is significantly higher compared to the number of violations created by Oncor. Given the large numbers of unauthorized attachments that circumvent the make-ready process, the results are not surprising and belie TWC's allegation that electric utilities "frequently" cause "wholesale safety violations" on the poles.[9] Based on Oncor's review of the comments filed by other electric utility pole owners, its experience is not unique. The photographs attached to the

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4 *See* Initial Comments of Time Warner Telecom Inc., One Communications Corp., and COMPTEL (referred to as "TWTC's initial comments"), p. 23.

5 *See* Ex. B to Oncor's Initial Comments, ¶ 15.

6 *Id.* at ¶ 19.

7 *See* Declaration of Larry Kohrmann, ¶ 3 (Attached hereto as Exhibit A).

8 *See id.*

9 *See e.g.,* Initial Comments filed by TWC, p. iv.

Declaration of Wil Arnett (attached hereto as Exhibit B) are just a few examples of the types and extent of some of the safety issues created by third-party attachers.

III. Overlashing Is An Increasing Concern For Pole Owners

A. Overlashing creates a new burden on poles

Contrary to the position taken by attachers,[10] and regardless of how it is legally characterized, overlashing presents a new burden on utility poles which raises significant safety, reliability, capacity and engineering concerns.[11] Repetition of the overlashing processes, in particular, increases the diameter and weight of the bundles (which is further impacted by the effect of wind and ice loading).[12] As the bundle grows, the impact is greater.

The CATV industry itself recognizes the additional load impact of overlashing. The *Recommended Practices for Coaxial Cable Construction and Testing Manual* (the "CATV Manual") explains that "pre-engineering" of existing plant must take place before overlashing.[13] The CATV Manual goes on to explain that "pre-engineering" is designed to ensure that the "poles and/or strands [will] support the load requirements."[14] Unregulated pole owners (municipal and co-ops) also seem to understand the engineering issues presented by overlashing. In its *APPA Pole Attachment Work Book* ("APPA Work

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[10] *See, e.g.*, Initial Comments filed by TWC, pp. 17-18.

[11] *See* Ex. B to Oncor's Initial Comments, ¶¶ 22-23.

[12] *See* Initial Comments filed by EEI, p. 74; *see also* Exhibit B to Oncor's Initial Comments, ¶¶ 22-23.

[13] *See Recommended Practices for Coaxial Cable and Testing,* §§ 1.4.2, 3.12.6 (2d ed., The Society of Cable Telecommunications Engineers 2002) ("CATV Manual"), excerpts attached hereto as Exhibit C.

[14] *See id.* Nowhere does the CATV Manual minimize the importance of the pre-engineering because a single overlashed wire is only 1" in diameter. The attachers efforts to obfuscate the engineering and load issues by the reference to their claimed single, small wire must be rejected.

Book"), the American Public Power Association notes that "the overlashing of existing facilities is considered a separate attachment requiring prior authorization through the permitting process."[15] The *APPA Work Book* goes on to explain:

> The rationale for treating overlashing in the same manner as other attachments, in terms of access, is that overlashing can have **significant impacts on pole loading and required separations**.[16]

Despite the undeniable engineering issues and the import of their own industry standards, attachers routinely trivialize the burden overlashing places on the poles. The result is an array of problems including, without limitation, failure of anchors due to increased tension and pole loading, pole deflection, and crushing/cracking of poles. As the saying goes – "a picture is worth a thousand words." The pictures attached to the Declaration of Wil Arnett (Exhibit B, Tab 1) show just some of the problems third-party attachers create on Oncor's poles.[17]

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[15] *See APPA Pole Attachment Work Book*, p. 24 (2002) ("APPA Work Book"), excerpts attached hereto as Exhibit D.

[16] *Id.* (emphasis added).

[17] *See* Declaration of Wil Arnett, Tab 1, attached hereto as Exhibit B.

B. Overlashing creates safety issues and should be subject to permitting and/or advance notice

TWC claims that overlashing does not require permitting.[18] TWC takes the position that requiring notice prior to overlashing creates severe operating issues, including delay to market.[19] However, because of the additional burden created on the pole by the overlashing process, it is necessary that Oncor receive prior notice so that it can deny access "where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes."[20] Prior notice also enables Oncor to: (1) ensure that the pole and cable to be overlashed do not have pre-existing violations of the NESC or Oncor's Standards and/or Specifications; (2) confirm that the desired overlashing will not create such violations; and (3) determine if any make-ready work is necessary. As the numbers set forth on pages 4-5 above reflect (48,547 of the total 52,400 violations found during Compliance Audit were created by third-party attachers), this process is a must. If a permitting process that catches safety and reliability issues on the front-end (by requiring prior notification) delays attachers' speed to market, that is a price that must be

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[18] *See* Initial Comments filed by TWC, p. 17. TWC reads the legal precedent too broadly. The precedent actually supports private parties' rights to contract for advance notice. *See, e.g., In the Matter of the Cable Television Ass'n of Georgia, et al., v. Georgia Power*, 18 FCC Rcd. 16333 (August 8, 2003) (holding that a contract provision requiring notice prior to overlashing was unjust and unreasonable on its face); *but see Southern Co. Servs. v. FCC*, 313 F.3d 574, 583 (D.C. Cir. 2002) ("[T]he FCC rules do not preclude pole owners from negotiating with pole users to require notice before overlashing"); *Time Warner Cable of Kansas City v. Kansas City Power and Light Co.*, 14 FCC Rcd. 11599, ¶ 26 (July 15, 1999)(prohibiting cable company from proceeding with overlashing where make- ready was required to correct existing violations or to accommodate proposed overlashing). Oncor's contracts, many of which have been in place for decades, require such notice as does Oncor's Overlash Notification Process ("ONP").

[19] *See* Initial Comments filed by TWC, p. 55.

[20] 47 U.S.C. § 224(f) ("a utility providing electric service may deny a cable television system or any telecommunications carrier access ... on a non-discriminatory basis where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes"). If Oncor does not have the ability to ensure that capacity exists before additional facilities are placed on its pole, this express statutory right is rendered meaningless.

paid. The permitting process (for host and overlashed attachments) is part of creating a safe system for the contractors, is consistent with the pre-engineering recommended by the *CATV Recommended Practices Manual*, and is paramount to Oncor's obligations under Texas State Law.

TWC's comments merit particular discussion. TWC goes so far as to allege that "[e]ven where TWC is upgrading its plant by overlashing fiber on existing attachments, some utilities are attempting to require TWC to halt construction when encountering ***minor*** . . . NESC violations on the pole."[21] Of course, TWC does not explain what they consider to be a "minor" NESC violation. A very recent discovery on Oncor's system demonstrates why TWC's position must be rejected and why permitting and/or advance notice procedures must be allowed and enforced. Since the filing of Oncor's Initial Comments, Oncor has discovered that TWC is performing an overlashing project in Arlington, Texas. As evidenced by the photographs below, TWC has not only disregarded the requirements of Oncor's ONP, but also has allowed a contractor to overlash a TWC facility that **actually runs directly through several secondary leads connected to Oncor's transformers**.

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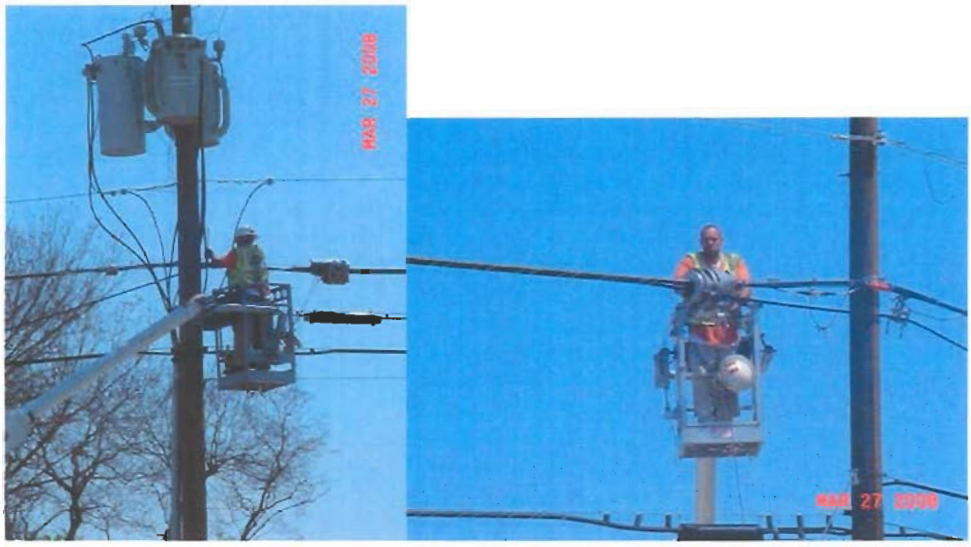
[21] *See* Initial Comments filed by TWC, p. 26 (emphasis added).



In yet another instance, another worker on the same project is caught (in the photograph below) working so close to Oncor's secondary power conductor that he could not possibly be respecting the NESC and Oncor mandated 40" Communication Worker Safety Zone.

If these are the types of situations to which TWC refers when it complains about utilities halting construction for "minor" NESC violations, Oncor is guilty as charged. Oncor cannot tolerate this type of practice and the Commission should not sanction regulatory changes that even unintentionally foster such activities.

Oncor is not accusing TWC of creating the conditions in which its contractors chose to work. In fact, Oncor determined through investigation that, in this particular instance, its own workers created the violation and has ordered immediate remediation work. Identification of the responsible party, however, is irrelevant on this point. The most important consideration is that **the communications contractor should never have worked on this pole**. The gravity of the situation cannot be over-emphasized and it demonstrates the necessity of enforcing Oncor's ONP. Had TWC submitted the appropriate notice to Oncor, this situation would have been discovered and corrected before any overlashing took place. Fortunately, this contractor was lucky. Neither Oncor, TWC, nor the Commission can take the chance that the next one will not be so fortunate.

C. Oncor Does Not Delay Attachers Access to Markets

The safety and reliability concerns urged by the electric utilities are real. Just as real are the insatiable desires of attaching entities to get to market as fast as possible – safety and pole reliability notwithstanding. The Commission's involvement in the areas of safety and reliability will make a bad situation worse – not better.

Certain attachers to Oncor's poles have followed Oncor's ONP and filed permit applications.[22] Notably, even TWC has filed permit applications for overlashing in the past which Oncor has granted. Of the 89 overlashing permits filed by third-party attachers in 2006-2007, Oncor has granted each application submitted.[23] Oncor's overlashing procedures allow the attachers to overlash as long as violations are not created, while allowing Oncor to exercise its right to deny access when needed (even if temporarily to

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[22] *See* Exhibit B to Oncor's Initial Comments, ¶ 21.

[23] *See* Kohrmann Declaration, ¶ 7.

prepare the pole for the additional burden).[24] Oncor urges the Commission to defer to the utilities' established standards and specifications, as well as the provisions contained in the existing agreements, governing the overlashing process.

IV. Unauthorized Attachments

Absent an emergency situation (which does not include speed to market), Oncor's agreements specifically prohibit the attachment, replacement, relocation, or modification of equipment on Oncor's poles unless a permit application has been submitted to and approved by Oncor.[25] Any attachment made to Oncor's poles before receiving approval through Oncor's Permit Application Process constitutes an unauthorized attachment. Unauthorized attachments pose a significant safety and reliability concern to Oncor.[26] Such attachments create instability on Oncor's network by frustrating Oncor's statutory right to deny access to poles.[27] Without the existence of that right, Oncor cannot be certain that its distribution system is safe and reliable because many attachments made to its poles are of unknown number, size, and weight.

A. Attachers are to Blame for Unauthorized Attachments, not Pole Owners

Instead of admitting to their widespread practice of taking pole space without authorization or payment (*i.e.*, theft), and making suggestions concerning reasonable resolution, attachers once again attempt to shift blame to the pole owners. TWC blames the high (and increasing) number of unauthorized attachments on "poor record keeping" by

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24 *See id.*

25 *See* Exhibit B to Oncor's Initial Comments, ¶ 20.

26 *See id.*

27 *See id.*

pole owners.[28] Knology claims that the unauthorized status of attachments is "often the result of the utility's retroactive enforcement of a change in its attachment policies."[29] Neither TWC nor Knology provides any evidence whatsoever to support their claims.[30]

Knology claims that "utilities are increasingly using pole attachment inventories ... as uncontrolled revenue-generating operations."[31] Knology could not be more wrong. Oncor employs these processes to monitor the safety and reliability of its system – not to make money. Oncor's charges to attachers for inventories, counts and audits are cost-based. Because safety and reliability are important to Oncor, and because conducting such processes is not cheap, Oncor makes it a top priority to obtain accurate results and to maintain reliable records of such results. The real complaint the attaching entities have with these processes is that they expose the attachers' efforts to steal pole space.

Oncor is currently conducting its 2007-2008 attachment count.[32] Just since the filing of Oncor's initial comments (a 45 day period), Oncor has found an additional 2,290 unauthorized attachments.[33] This high number of unauthorized attachments is *not* the result of "poor record keeping." Instead, these unauthorized attachments are the result of

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28 *See* Initial Comments filed by TWC, pp. 54-56

29 *See* Initial Comments filed by Knology, p. 18.

30 In response to TWC's unsupported allegation of "poor record keeping" on behalf of the electric utilities, this is simply not the case with Oncor and its attachers. Oncor's agreements explicitly require both parties (Oncor and attacher) to maintain perpetual inventories of the attachments to Oncor's poles to ensure accurate pole data. To this end, Oncor conducts pole inventories, counts and audits to monitor the status of its poles, as well as the compliance of attachments on its poles with the NESC and applicable Oncor Standards and Specifications. While Oncor has provided data gathered as a result of the inventories, counts and audits in its initial comments, as well as below, TWC has failed to provide any evidence from its own records disproving Oncor's data. Furthermore, TWC cannot ignore its own duty to maintain accurate attachment records.

31 *See* Initial Comments filed by Knology, p. 12.

32 *See* Kohrmann Declaration, ¶ 4.

33 *See id.*

third-party attachers bypassing the permit application process (as explained in detail in Oncor's initial comments) in an effort to gain access to market faster, regardless of the safety and reliability concerns they create. As evidence of the fact that third-party attachers are aware of the presence of unauthorized attachments, it should be noted that many of Oncor's third-party attachers have already paid Oncor for the unauthorized attachments found during the 2007-2008 attachment count, without objection.[34]

B. Penalties are Needed to Stop Unauthorized Attachments

Notwithstanding the undeniable prevalence of unauthorized attachments, the attaching entities urge the Commission to prohibit monetary penalties for unauthorized attachments.[35] When it comes to their own property, though, the attachers are not so generous. The following excerpts from CATV websites demonstrate the hardline they take concerning unauthorized tapping into their facilities:

> Please contact Cox if you feel someone is receiving services without paying for them. **It is illegal to fraudulently obtain cable service by attaching a wire or device to the converter or any other company wires or equipment.** The penalties under the law include fines up to $10,000, imprisonment or both. While in some cases we offer amnesty if the offender agrees to become a paying customer, we do find it necessary to prosecute to the fullest extent of the law. Cable theft industry-wide costs operators over $1 billion annually and can drive up monthly costs for our honest, paying customers.[36]

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[34] *See* Kohrmann Declaration, ¶ 5.

[35] *See* Initial Comments filed by Knology, p.19.

[36] *See* Cox Communications, Cable Theft, http://www.cox.com/middleGA/help/cable/theft.asp#theft (last visited April 22, 2008) (emphasis added).

> Cable television theft is the illegal interception of cable programming services without the express authorization of, or payment to, a cable television system. There are two types of cable theft, passive and active. Passive theft occurs when a consumer receives services due to faulty cable operator procedures. **Active theft occurs when someone knowingly and willfully makes an illegal physical connection to the cable system and/or attaches or tampers with equipment to allow the receipt of unauthorized services.** Active theft can occur at both a consumer or commercial level. Commercial theft usually happens in an environment where the proprietor receives financial gains from the illegal services (*i.e.* a bar or restaurant).[37]

Despite attachers' position on theft of their own services, attachers encourage the Commission not to allow any barrier to their piracy of pole space. With no real penalty, attaching entities will continue their practices of "rolling the dice" – *i.e.*, attach as fast as they can and if caught, simply pay what they should have paid to begin with. This is the wrong model, and a model that should no longer be sanctioned by the Commission. Substantial monetary penalties are necessary to provide a sufficient deterrent in order to reduce the number of unauthorized attachments.[38] Notably, attachers did not even defend the "economic loss only" paradigm in their initial comments, nor did they offer proof that the present method is providing a sufficient deterrent. The reason is simple: it is not.

V. Make-Ready Timelines

Many attachers support the Fibertech Petition[39] and suggest that the Commission should adopt strict guidelines with regard to completion of make-ready work. Some

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[37] *See* Time Warner Cable, Service Policies, http://www.timewarnercable.com/kansascity/customer/policies/theftpolicy.html (last visited April 22, 2008) (emphasis added).

[38] *See* Exhibit B to Oncor's Initial Comments, ¶¶ 20-21.

[39] *See* Initial Comments filed by Cavalier Telephone LLC, p. 2; *see also* Initial Comments filed by Metro PCS Communications, p. 7.

attachers merely state that they support Fibertech's suggested timelines (*i.e.*, identify any necessary make-ready work within 30 days of receipt of a complete application and complete make-ready work within 45 days of payment), while others suggest a graduated schedule dependent upon the number of poles requiring work. For example, WOW! Internet Cable and Phone suggests a graduated schedule of time frames should be used to determine deadlines for make-ready based on the number of poles, and that the time limits for surveying, approving applications and conducting make-ready work should be consolidated (*e.g.*, suggests a time limit to complete survey and make-ready work for 750 poles should be 90 days).[40] Similar to the inflexible "best practices idea," these blanket periods for completion of make-ready work are unrealistic and would sanction access to market and profits as *more important* than the safety and reliability of the electric distribution system. The identification and performance of quality make-ready work must remain a higher priority than speed to market – regardless of the service provided. The Commission should not take – and frankly cannot afford to take – the direction urged by the attaching entities.

Mandated timelines also ignore real world factors (many of which are beyond the control of the pole owners) that invariably affect the speed of make-ready work. Such factors can include, without limitation: (1) the size of the system; (2) the total number of licensees with attachments to the system, as well as the number of attachments to the specific poles on which make-ready work is being performed; (3) the total number of permits pending at one time (taking into consideration the number of poles on each permit

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[40] *See* Initial Comments filed by Wow! Internet Cable and Phone, p.4.

and type of make ready and/or fix and repair work to be completed); (4) significant weather events (causing major outages) which occur during the time make-ready work is being performed; (5) being forced to work around certain restrictions due to other parties blocking access to the subject poles (such as City employees working in an alley and blocking Oncor's access to such poles); (6) applying for highway and railroad permits; (7) foreign contacts not being adjusted; (8) assisting other utilities in emergencies; and (9) waiting on special order material to arrive. Furthermore, adoption of strict make-ready deadlines would fail to consider and accommodate the geographic area in which the poles are located (some elements of which can make pole work difficult).

Oncor's agreements take into consideration the fact that the time frames required for the pole owners to inspect and perform make-ready vary from job to job and are determined by a very fact-specific analysis of the network. Specifically, Oncor's agreements limit permit submissions to no more than ten applications by one entity within a thirty day period (collectively requesting a total of no more than 120 attachments) to enable Oncor to respond in an orderly and timely fashion.

Pursuant to 47 C.F.R. §1.1403(b), absent extenuating circumstances, Oncor notifies an attacher of whether or not it approves a permit application within 45 days of receipt.[41] Oncor often provides estimates of the expected completion date for the work to be performed.[42] While timeliness is not usually a problem for small jobs, based on the factors discussed above, it can become a challenge in certain circumstances.[43] For example,

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41 *See* Kohrmann Declaration, ¶ 6.

42 *See id.*

43 *See id.*

severe weather delayed projects for AT&T and Northland Cable for several weeks in March 2008.[44] Restricted access by the city/customer delayed a project for TWC in Dallas by a month in December 2007 while a project for AT&T was delayed by a month in December 2007 due to AT&T not setting mid-span poles in a timely manner.[45] Just these few examples demonstrate why an adoption of make-ready deadlines is unrealistic and unworkable. The Commission has refused to adopt strict make-ready deadlines in the past[46] and should continue to do so.

VI. NESC and Generally Accepted Engineering Principles Request ILEC Attachments to be the Lowest on the Pole

Cavalier Telephone, LLC takes the position in its initial comments that a CLEC (and by implication, a CATV) should be allowed to attach below the ILEC attachments on any given pole if the ILEC does not wish to move its pre-existing attachment to accommodate a new attachment.[47] Oncor is not aware of any pole owners that routinely allow attachments below the ILEC attachments. Oncor's practice requires that ILEC attachments be the lowest on the pole. Oncor's practice establishes the following presumptive order of attachments (from bottom to top): ILEC – CATV – CLEC – Electric.

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[44] *See id.*

[45] *See id.*

[46] *See Petition of Cavalier Telephone LLC Pursuant to Section 252(E) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Arbitration*, Memorandum Opinion and Order, WC Docket No. 02-359, 18 FCC Rcd. 25887 at ¶¶ 140-142 (2003) (FCC refused to adopt requested make-ready deadline because it would have required Verizon to attempt to renegotiate potentially all of its pole attachment license agreements, imposing a potentially unreasonable burden on Verizon in the absence of evidence of discriminatory treatment toward Cavalier).

[47] *See* Initial Comments filed by Cavalier, pp. 3-4.

Once again, the attachers' comments on this issue do not square with their own time-honored industry practices. The CATV Manual notes, in several different sections, that the ILEC attachment is the bottom attachment on the pole.[48] Similarly, the Bellcore Manual makes clear that ILEC attachments are the bottom attachment, below CATV.[49]

Allowing attachments to be made below the ILEC attachments could also create confusion with regard to identification of the attacher. NESC Rule 220(A) provides that "[t]he levels at which different classes of conductors are to be located should be standardized by agreement of the utilities concerned." With regard to conductors, Rule 220(D) provides:

> All conductors of electric supply and communication lines should, as far as is practical, be arranged to occupy *uniform positions* throughout, or shall be constructed, located, marked, numbered, or attached to distinctive insulators or crossarms, so as to *facilitate identification by employees authorized to work thereon.* This does not prohibit systematic transposition of conductors.[50]

With regard to electric and communication lines, Rule 220(E) provides:

> All equipment of electric supply and communication lines should be arranged to occupy *uniform positions* throughout or shall be constructed, located, marked, or numbered so as to facilitate identification by employees authorized to work thereon.[51]

As evident from the NESC provisions quoted above, a great emphasis is placed on uniformity with regard to location of attachments on the poles. Uniformity assists workers

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[48] *See, e.g.*, §§ 1.4.1.2, 3.4 (Figures 3-3 and 3-4).

[49] *Bellcore, Blue Book – Manual of Construction Procedures*, at pp. iii, 1.1, 3-2, 3-5 (Issue 3, December 1998) (this manual "is designed to inform [telecommunications companies] of "uniform construction procedures to be followed by all parties authorized by a telephone company to place their facilities on or in supporting structures and trenches owned, administered, or provided by the telephone company.").

[50] NESC, Rule 220(D).

[51] NESC, Rule 220(E).

in identifying the types of attachments they will be working on and/or around, and the safety measures they need observe at any given time. Furthermore, at least 100 years of attachment activity demonstrates that the ILECs have routinely staked out their positions at the bottom of the communication space, and negotiated for that space in virtually every joint use agreement over the past 80 years.

In addition to hindering uniformity, allowing attachments below ILEC attachments would create additional safety, reliability and engineering concerns. For example, telephone bundles continue to increase in size. These bundles will virtually always be larger than the bundles of other attachers. From a practical standpoint, since the ILEC will have the largest, heaviest cables (copper conductors), and therefore the most midspan sag, there is no other logical place for the ILEC attachments to be located. Common sense dictates that the heaviest equipment should be located beneath the other attachments (minimizing the potential sag due to heavier cables and the burden on the workers when replacing / modifying ILEC equipment).

To maintain the uniformity of the existing attachments, the Commission should reject Cavalier's request to require pole owners to allow attachments below ILEC attachments. Pursuant to the NESC, the location of attachments within a network "should be standardized by agreement of the utilities concerned."[52] Electric, CATV and ILEC industry standards conform to the NESC. Commission intervention in this matter is neither appropriate nor needed.

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[52] NESC, Rule 220(A).

VII. Temporary Attachments

↑ *Is this a "Temporary Attachment"?*[53]

Fibertech takes the position that "[w]here pole owners cannot or will not comply with make-ready deadlines, competitors should be allowed to use temporary attachments."[54] Fibertech urges the Commission to require utilities to allow attachers to use "temporary attachments" to compensate for the alleged "delay" in gaining access to market for which they fault the pole owners.[55] Oncor's agreements do not allow temporary attachments. While Oncor's agreements allow attachments to be made in emergency situations without receiving prior approval through Oncor's Permit Application Process, Oncor does not recognize impatience as an emergency situation.

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[53] This photograph shows a TWC contractor's solution to not being finished with an overlashing project at quitting time.

[54] *See* Initial Comments filed by Fibertech, p. 27.

[55] *See id.* at 25.

While NESC Rule 014 provides that "[t]he person responsible for an installation may modify or waive rules in the case of emergency or temporary installations," the NESC does not require pole owners to allow temporary attachments.[56] Moreover, the NESC mandates that temporary overhead installations "meet the requirements for non-temporary installation except that the strength of material and construction shall not be less than that required for Grade N construction."[57] Therefore, pursuant to the NESC, the only thing that can be "temporary" about the attachment is the grade of construction. In other words, the clearance requirements provided in the NESC, or utility specific standards, are not inapplicable simply because the attachment is said to be "temporary." Utilization of temporary attachments also creates an additional burden with regard to performing necessary make-ready / fix and repair work because the individuals performing the work must maneuver around the temporary attachments. As reflected in Photos 20-23 in the Arnett Declaration (Exhibit B), temporary attachments create additional strain on poles that must be accounted for with appropriate guying.

VIII. Manhole and Vault Access

Fibertech, along with others, urges the Commission to adopt a rule allowing "utility-approved contractors to work in manholes without utility supervision" and to allow competitors to "survey manholes to determine availability of conduit."[58] Oncor prohibits manhole and vault access without the supervision of an Oncor employee or representative,

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56 NESC, Rule 014.

57 *Id.*

58 *See* Fibertech Petition, p. 5; *see also* Initial Comments filed by Fibertech, pp. 32-37, 41-45.

and urges the Commission to deny this request.[59] As indicated in photographs below (and those attached as Tab 1 to Larry Kohrmann's Declaration),[60] the manhole and vault areas are extremely small and confined.

Due to the small work space, workers within these areas are in close proximity to energized lines capable of producing over 100,000 amps during fault events, creating unique safety concerns. Workers accessing these areas must be intimately familiar with these unique concerns and properly trained in mitigating these risks to avoid injury. To that end, as pointed out in Oncor's initial comments, not even all Oncor employees are allowed to access Oncor's manholes and vaults.[61]

IX. Conclusion

Based on the arguments presented in Oncor's initial and reply comments, Oncor once again urges the Commission to decline the invitation to adopt general rules of

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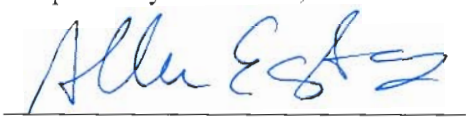
59 *See* Kohrmann Declaration, ¶ 8.

60 *See id.*, Tab 1.

61 *See* Initial Comments filed by Oncor, p. 22.

applicability impacting electric distribution system safety, reliability, and engineering. A blanket set of one-size-fits-all "best practices" is unworkable and would hand-cuff the electric utilities' ability to ensure that their respective distribution systems are safe and reliable.

Respectfully submitted,



COUNSEL FOR ONCOR ELECTRIC DELIVERY COMPANY

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Allen M. Estes
Lindsay S. Reese
BALCH & BINGHAM LLP
1901 Sixth Avenue North
Suite 1500
Birmingham, AL 35203-4644
T: (205) 251-8100

April 22, 2008

EXHIBIT A

Before the
Federal Communications Commission
Washington, D.C., 20554

In the Matter of	)	
	)	
Implementation of Section 224 of the Act;	)	WC Docket No. 07-245
Amendment of the Commission's Rules and	)	
Policies Governing Pole Attachments	)	RM-11293
	)	RM-11303
	)	

DECLARATION OF LARRY KOHRMANN

1. My name is Larry Kohrmann. I am currently employed by Oncor Electric Delivery Company, LLC ("Oncor") as Distribution Standards Manager.

2. I filed my declaration in support of Oncor's Initial Comments and now file this declaration in support of Oncor's Reply Comments based on my personal and professional knowledge, as well as knowledge available to me in my capacity as Distribution Standards Manager for Oncor.

3. Oncor's Compliance Audit launched in 2004 revealed 52,404 total violations. Of the 52,404 total violations, 48,547 (92%) were created by third-party attachers. In contrast, only 3,857 (7.4%) of the existing violations were created by Oncor.

4. Oncor is currently conducting its 2007-2008 attachment count. Just since the filing of Oncor's initial comments (45-day period), Oncor has found an additional 2,290 unauthorized attachments.

5. Many of Oncor's third-party attachers have already paid Oncor for the 2007-2008 attachment count, without objection

6. Pursuant to 47 C.F.R. §1.1403(b), absent extenuating circumstances, Oncor notifies an attacher of whether or not it approves a permit application within 45 days of receipt. Oncor often provides estimates of the expected completion date for the work to be performed. While timeliness is not usually a problem for small jobs, it can become a challenge in certain circumstances. For example, severe weather delayed projects for AT&T and Northland Cable for several weeks in March 2008. Restricted access by the city/customer delayed a project for Time Warner Cable in Dallas by a month in December 2007 while a project for AT&T was delayed by a month in December 2007 due to AT&T not setting mid-span poles in a timely manner.

7. Oncor's Joint Use Agreements require attachers to submit a permit application prior to overlashing. Certain attachers to Oncor's poles have followed Oncor's overlashing procedures and filed permit applications for their intended overlashing. Notably, even TWC has filed permit applications for overlashing in the past which Oncor has granted. Of the 89 overlashing permits filed by third-party attachers in 2006-2007, Oncor has granted each application submitted. Oncor's overlashing procedures allow the attachers to overlash as long as NESC/Oncor violations are not created, while allowing Oncor to exercise its right to deny access when needed (even if temporarily to prepare the pole for the additional burden).

8. Oncor prohibits manhole and vault access without the supervision of an Oncor employee or representative. As indicated in photographs attached as Tab 1 to this declaration, the manhole and vault areas are extremely small and confined. The photographs accurately reflect conditions found in Oncor's manhole/vault areas. The descriptive captions on the photographs are based on my interpretation of the photograph.

9. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the facts set forth in this declaration are true to the best of my knowledge.

Executed on the 22nd day of April, 2008.

Larry Kohrmann
Distribution Standards Manager, Oncor Electric Delivery Company, LLC

TAB 1

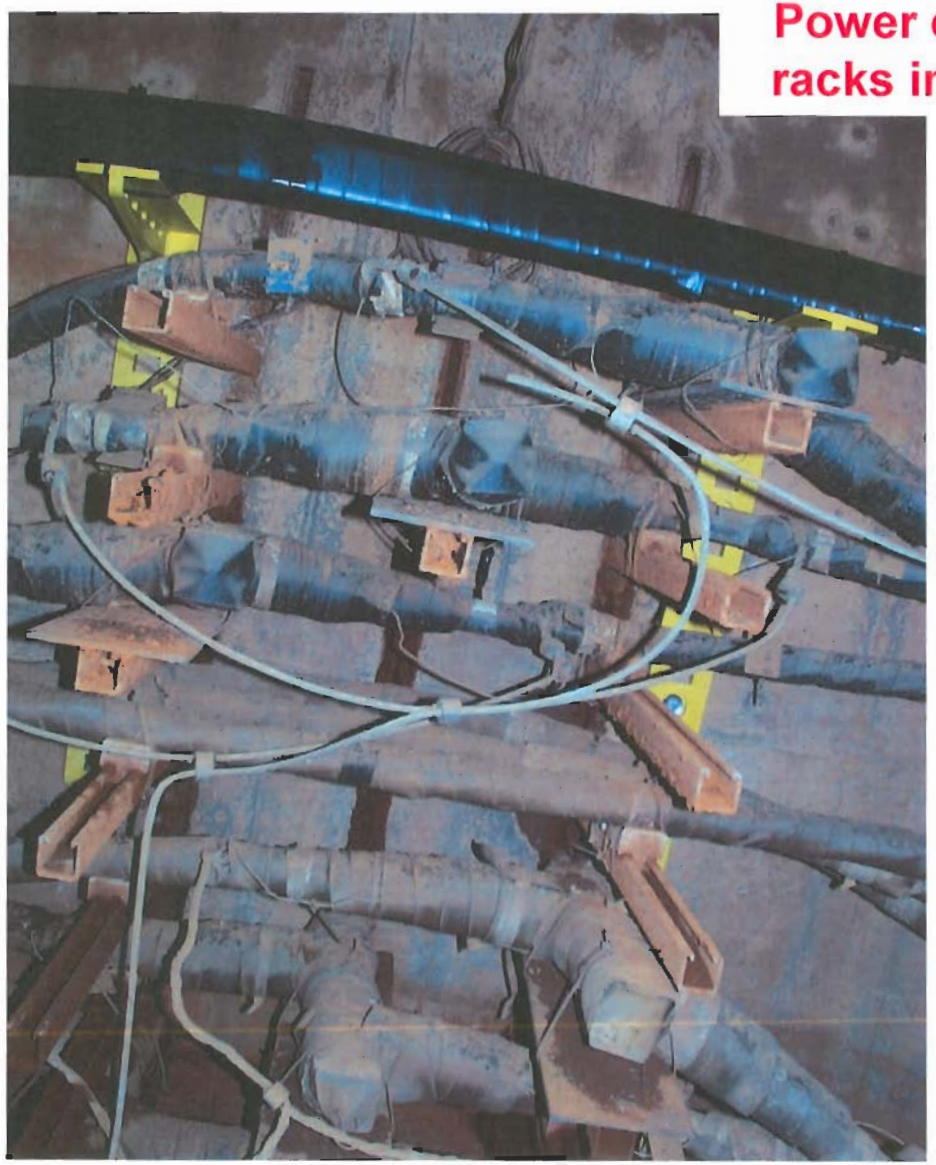
Photographs in Support of Larry Kohrmann Declaration

Submitted in Support of Oncor Electric Delivery Company's Reply Comments

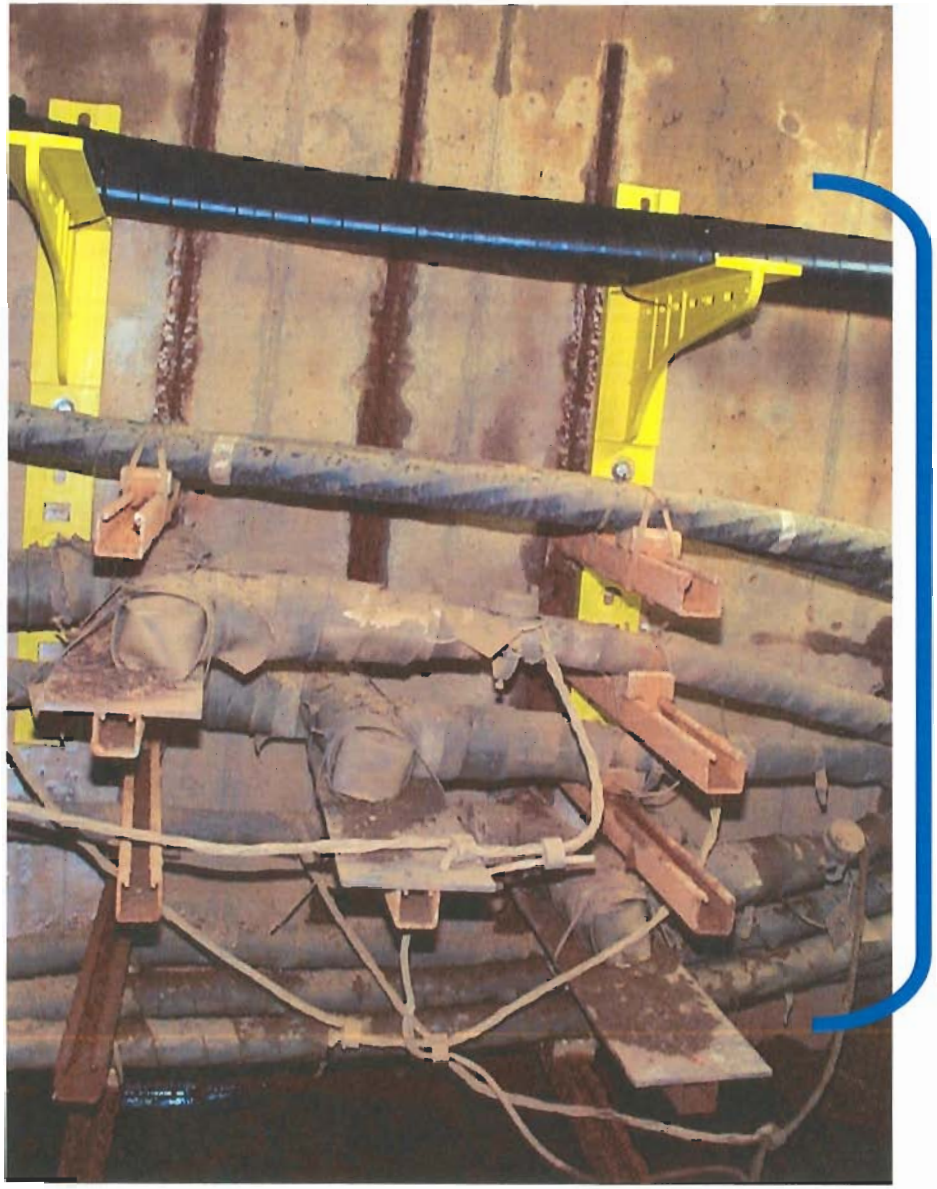
April 22, 2008

Manholes / Vaults

Power cables on wall racks inside manhole



Power cables



Power cables

EXHIBIT B

Before the
Federal Communications Commission
Washington, D.C., 20554

In the Matter of	)	
	)	
Implementation of Section 224 of the Act;	)	WC Docket No. 07-245
Amendment of the Commission's Rules and	)	
Policies Governing Pole Attachments	)	RM-11293
	)	RM-11303
	)	

DECLARATION OF WILFRED ARNETT

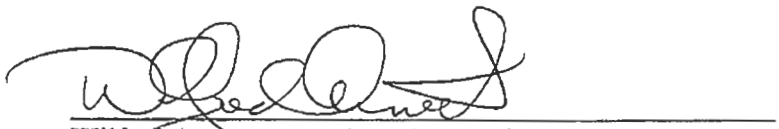
1. My name is Wilfred ("Wil") Arnett. I am currently the Executive Vice-President of Utility Support Systems ("USS"). We serve as a contractor for Oncor Electric Delivery Company ("Oncor") in joint use matters.

2. This declaration is based on my personal and professional knowledge, as well as knowledge available to me in my capacity at USS and my work for Oncor.

3. The photographs attached hereto as Tab 1 were taken by me, or employees of USS at my direction. The photographs accurately reflect conditions found on Oncor electric distribution poles. The descriptive captions on the photographs are based on what myself or another employee of USS saw at the various pole locations. Where I did not directly observe the conditions, my description is based on my interpretation of the photograph. My descriptions are a fair and accurate explanation of the conditions reflected in the respective photographs.

4. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the facts set forth in this declaration are true to the best of my knowledge.

Executed on the 22nd day of April, 2008.



Wilfred Arnett, Executive Vice President
Utility Support Systems, Inc.

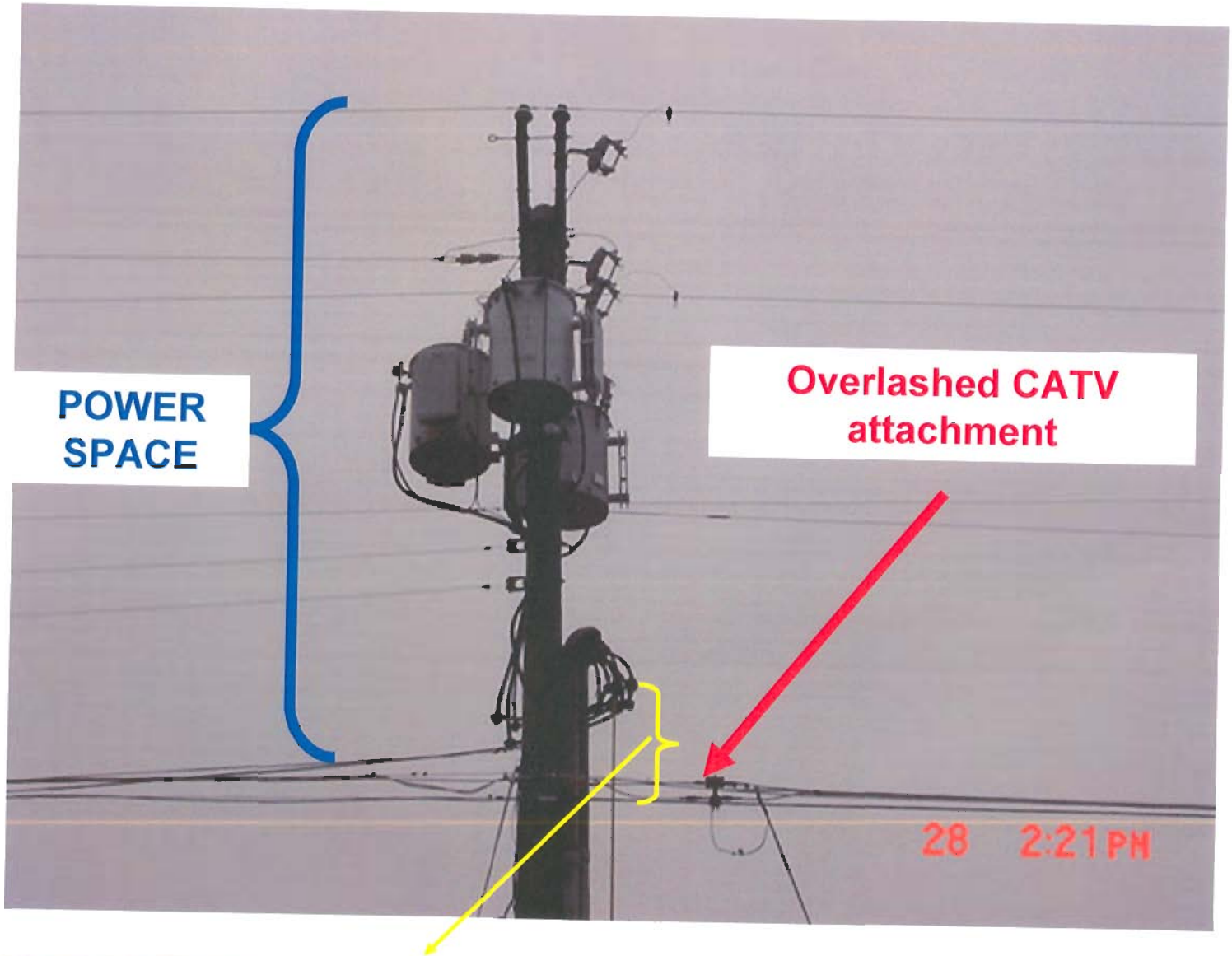
TAB 1

Photographs in Support of Wil Arnett Declaration

Submitted in Support of Oncor Electric Delivery Company's Reply Comments

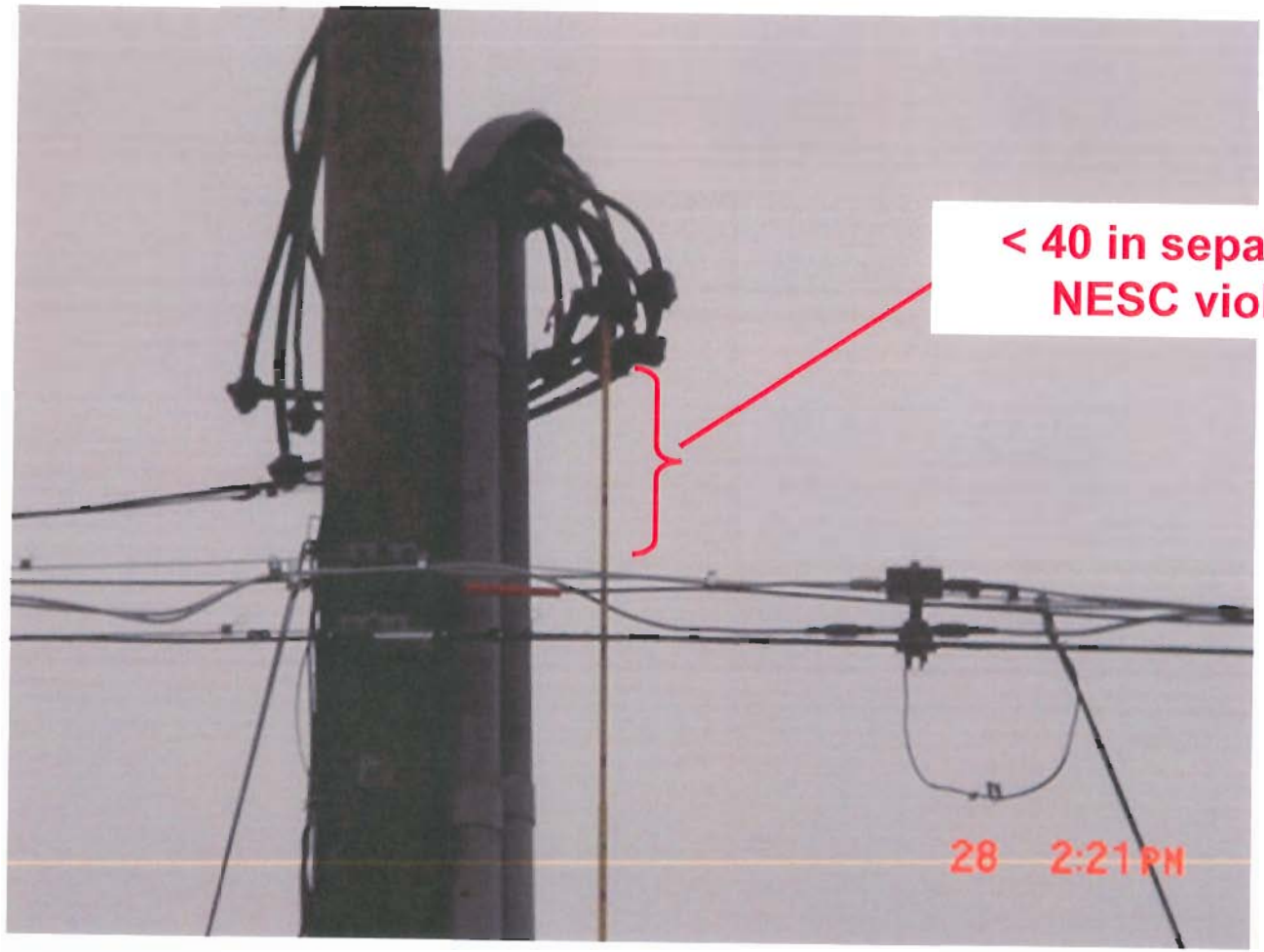
April 22, 2008

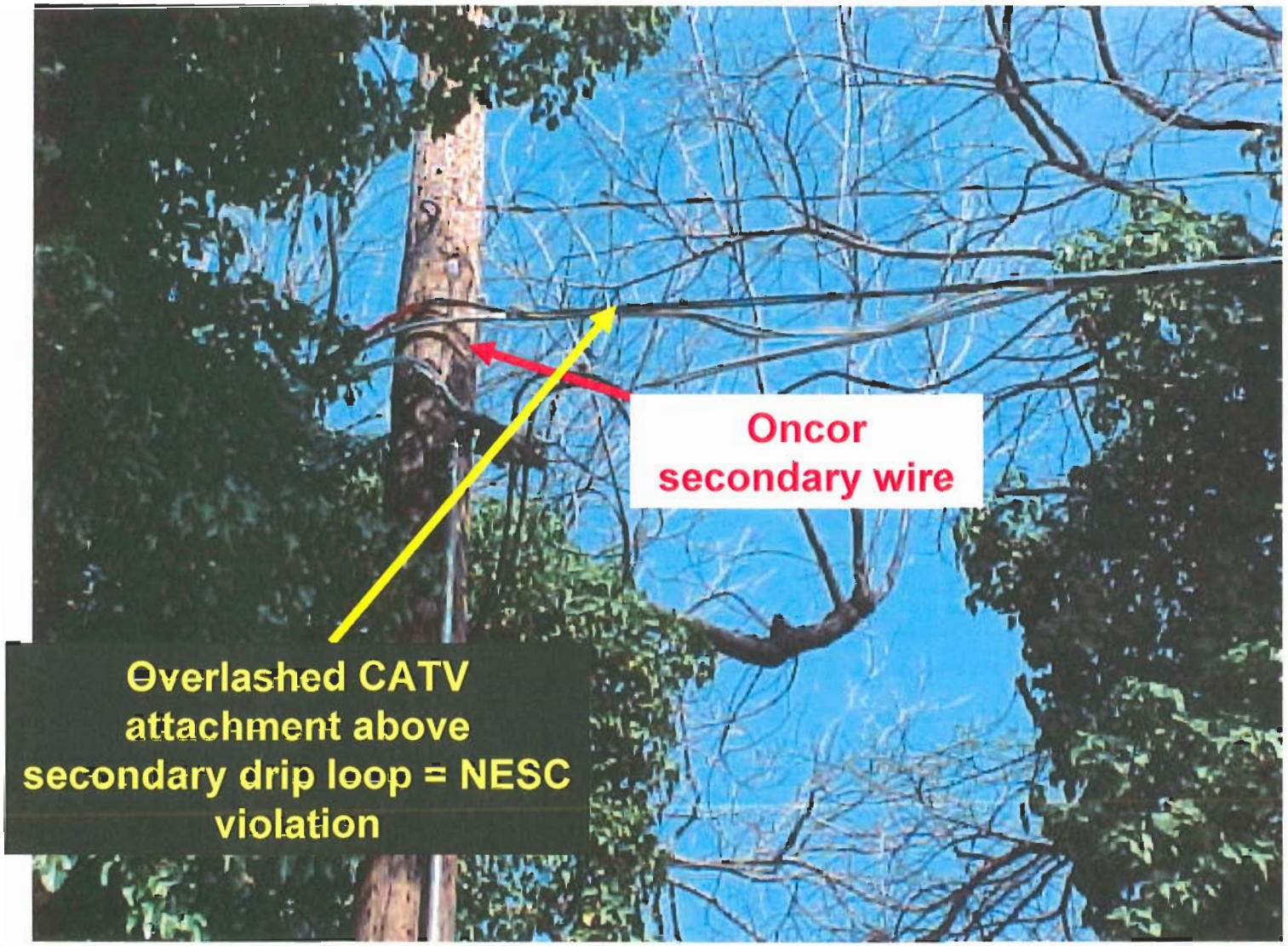
Violations CATV / ILEC

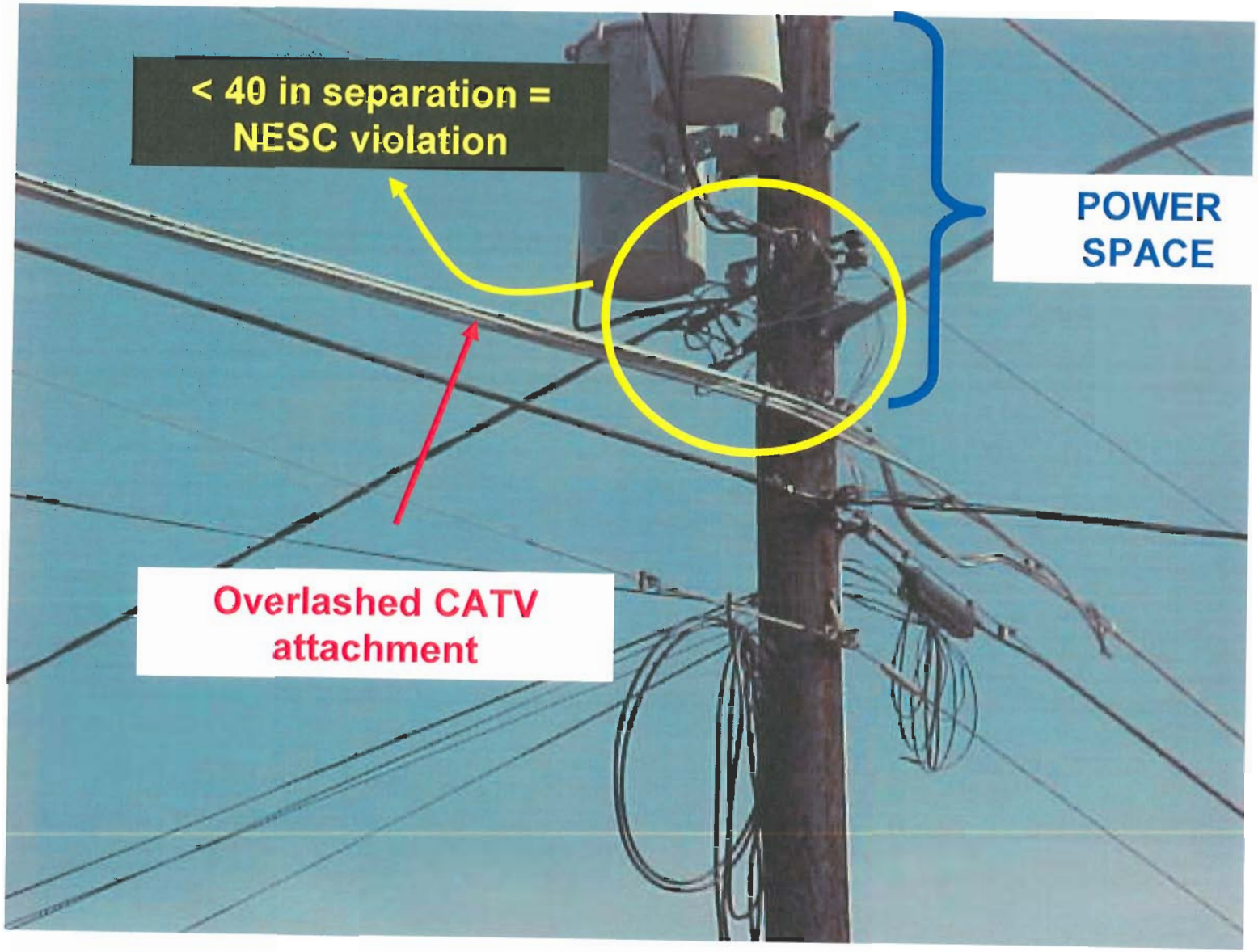


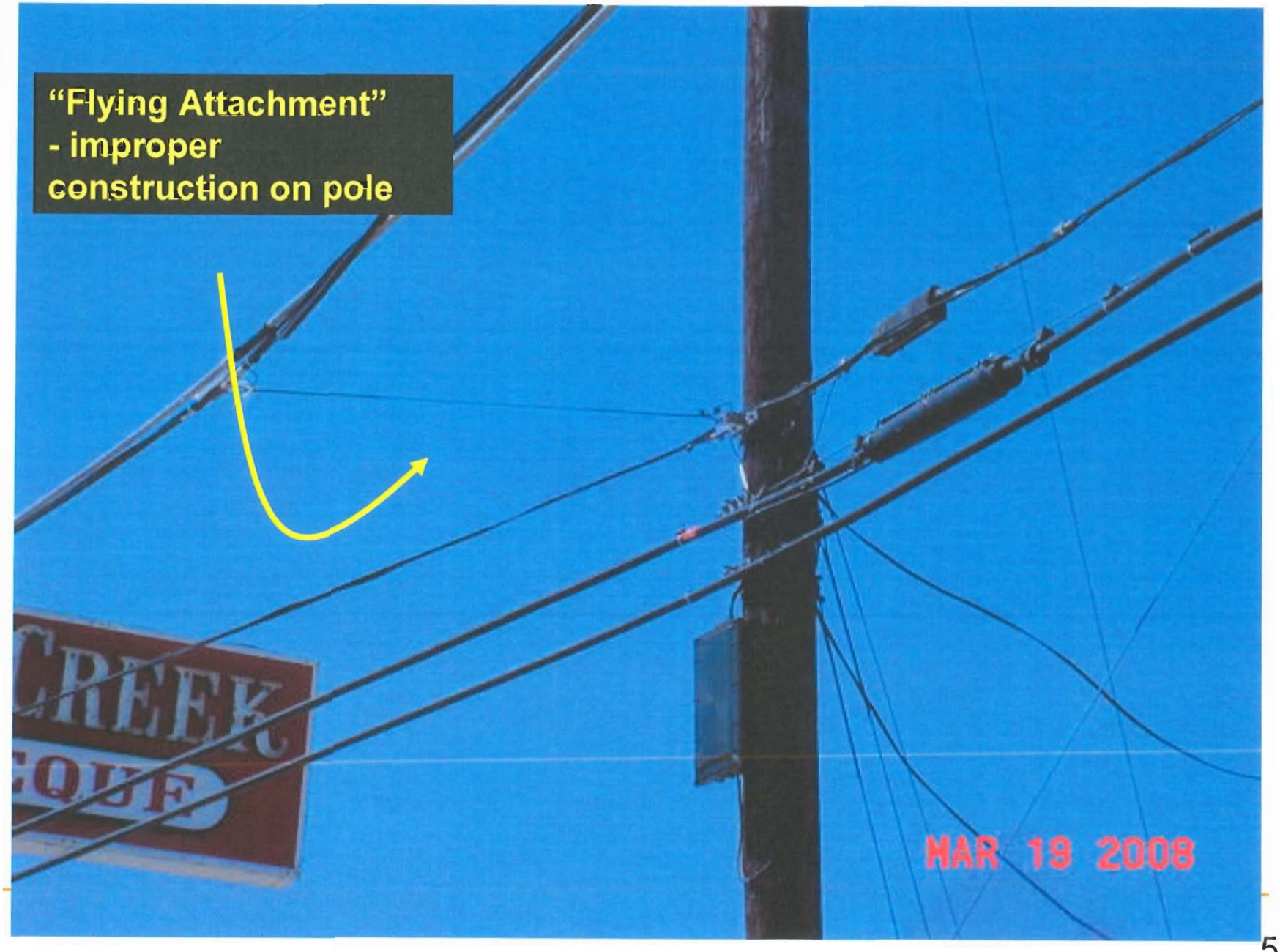
< 40 in separation =
NESC violation

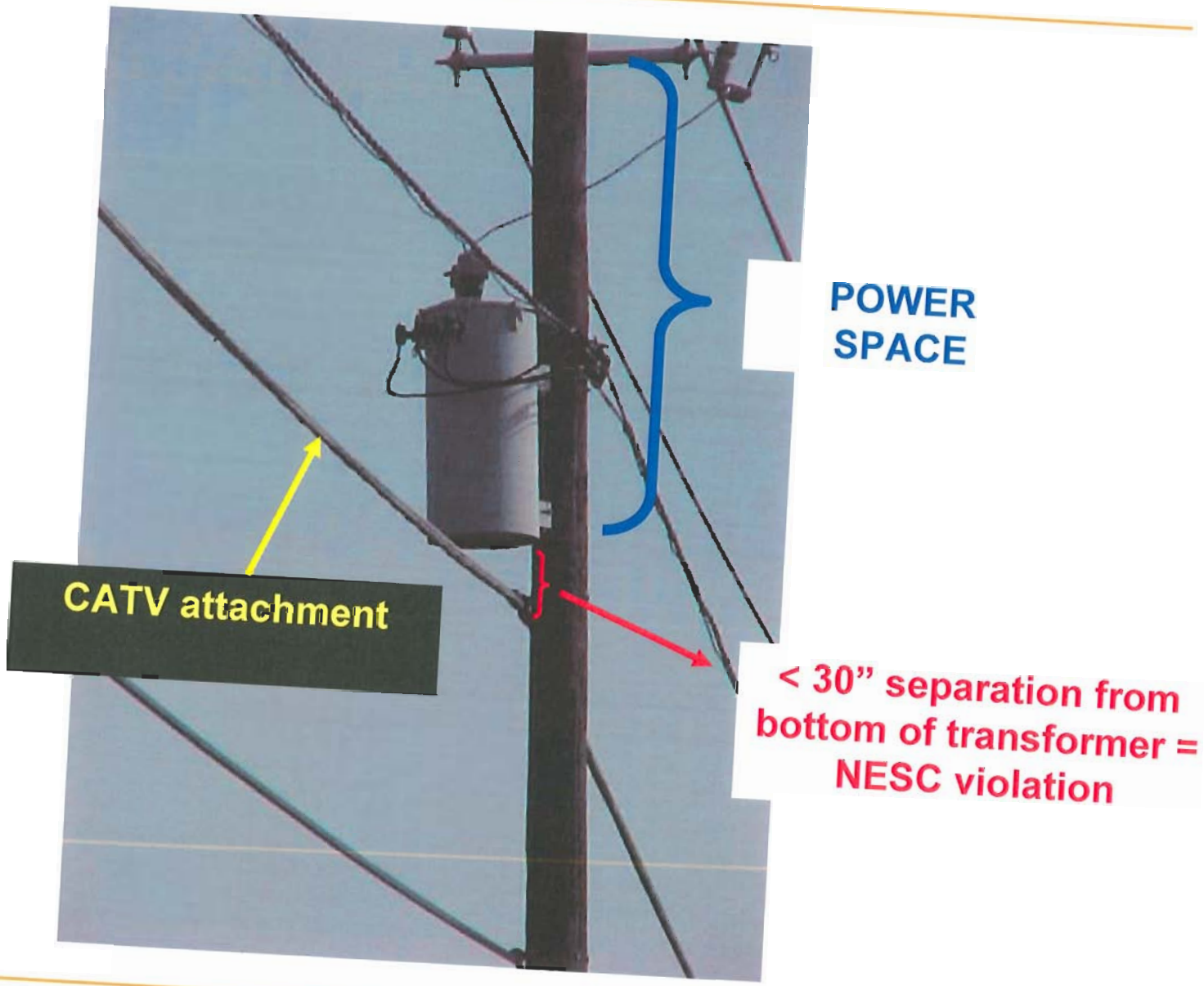
Close-up of previous slide



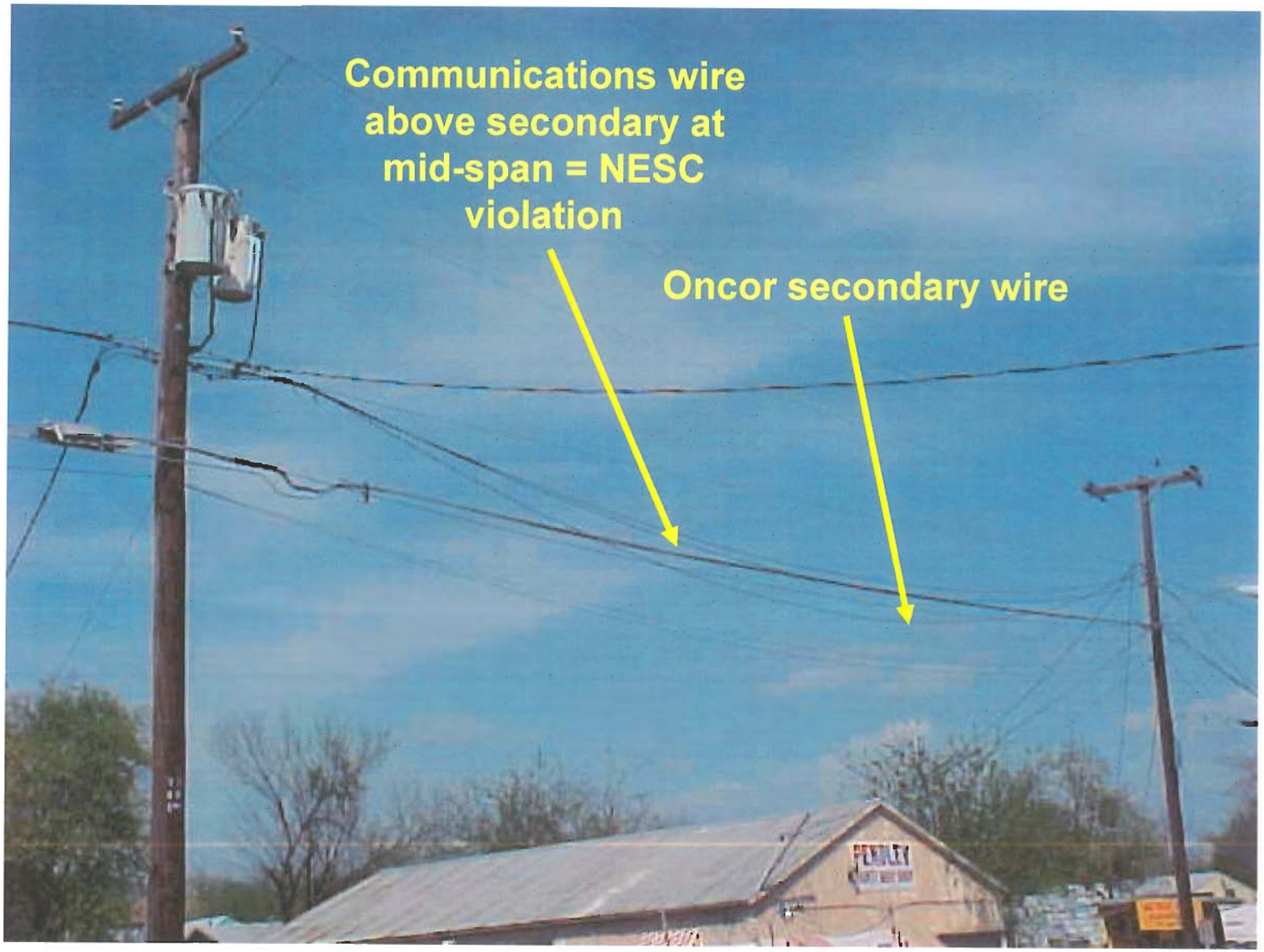

Oncor
secondary wire
Overlashed CATV attachment above secondary drip loop = NESC violation

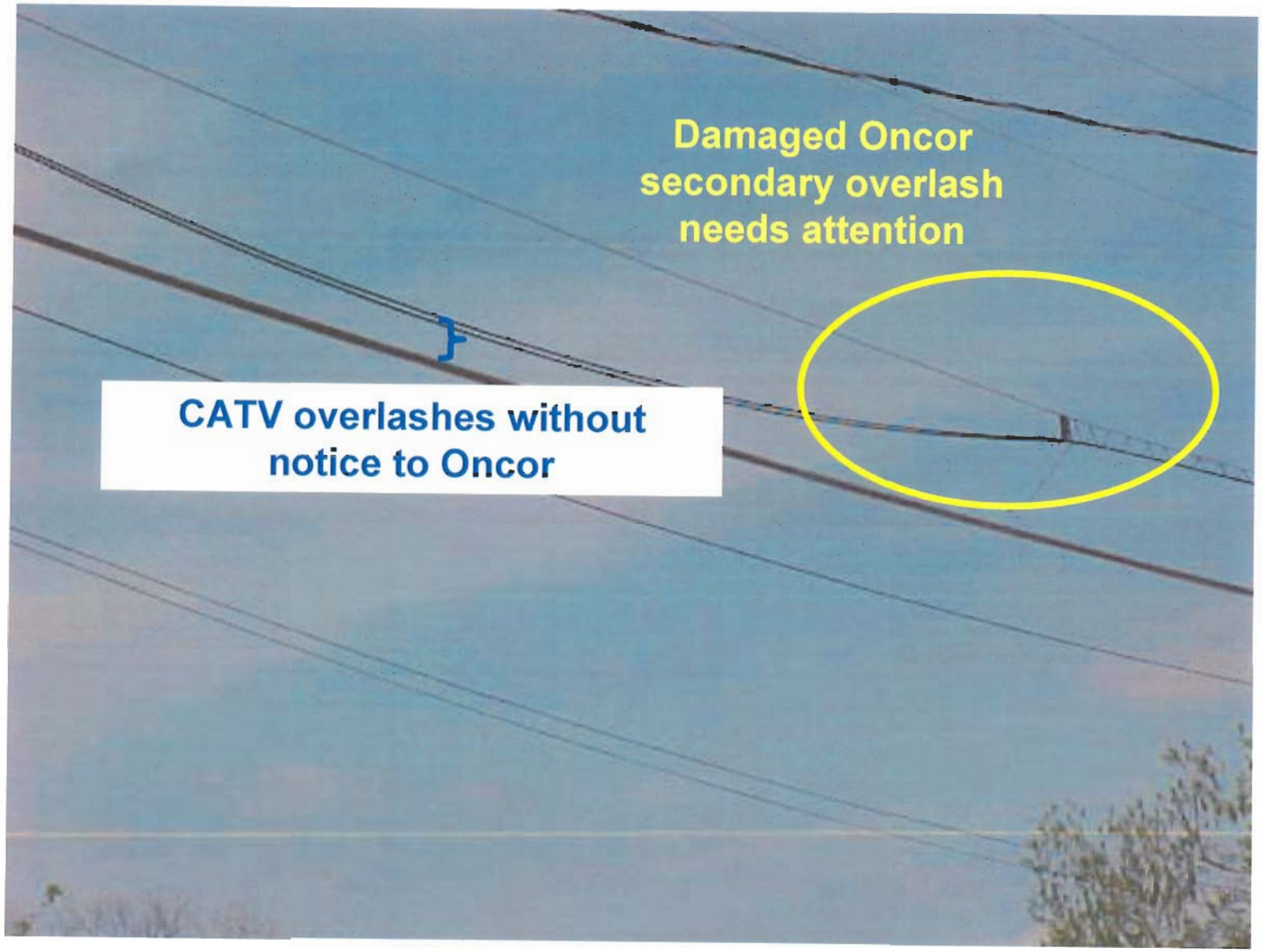

< 40 in separation =
NESC violation
POWER
SPACE
Overlashed CATV
attachment

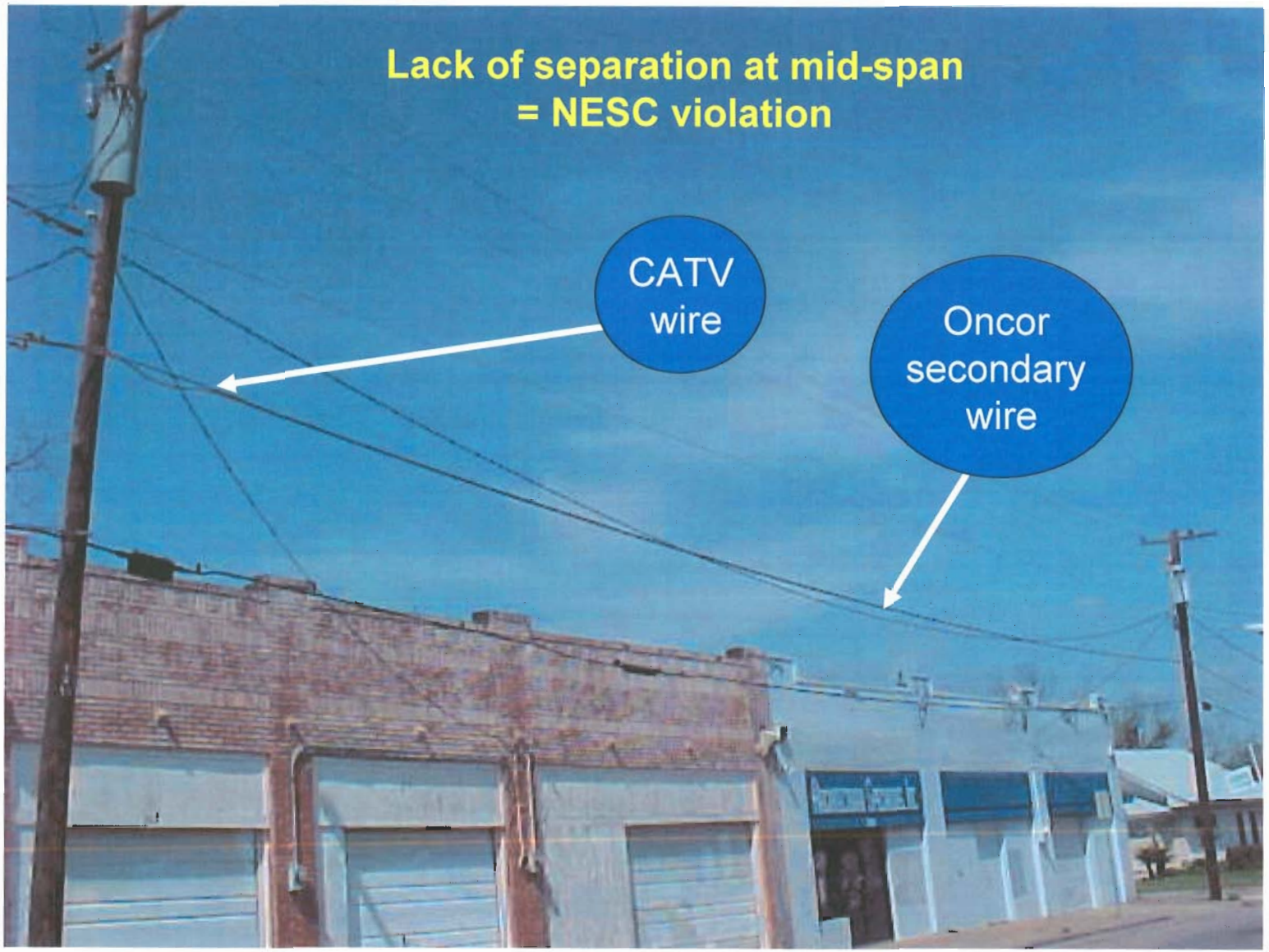

"Flying Attachment"
- improper
construction on pole
CREEK
MAR 19 2008


POWER
SPACE
CATV attachment
< 30" separation from
bottom of transformer =
NESC violation

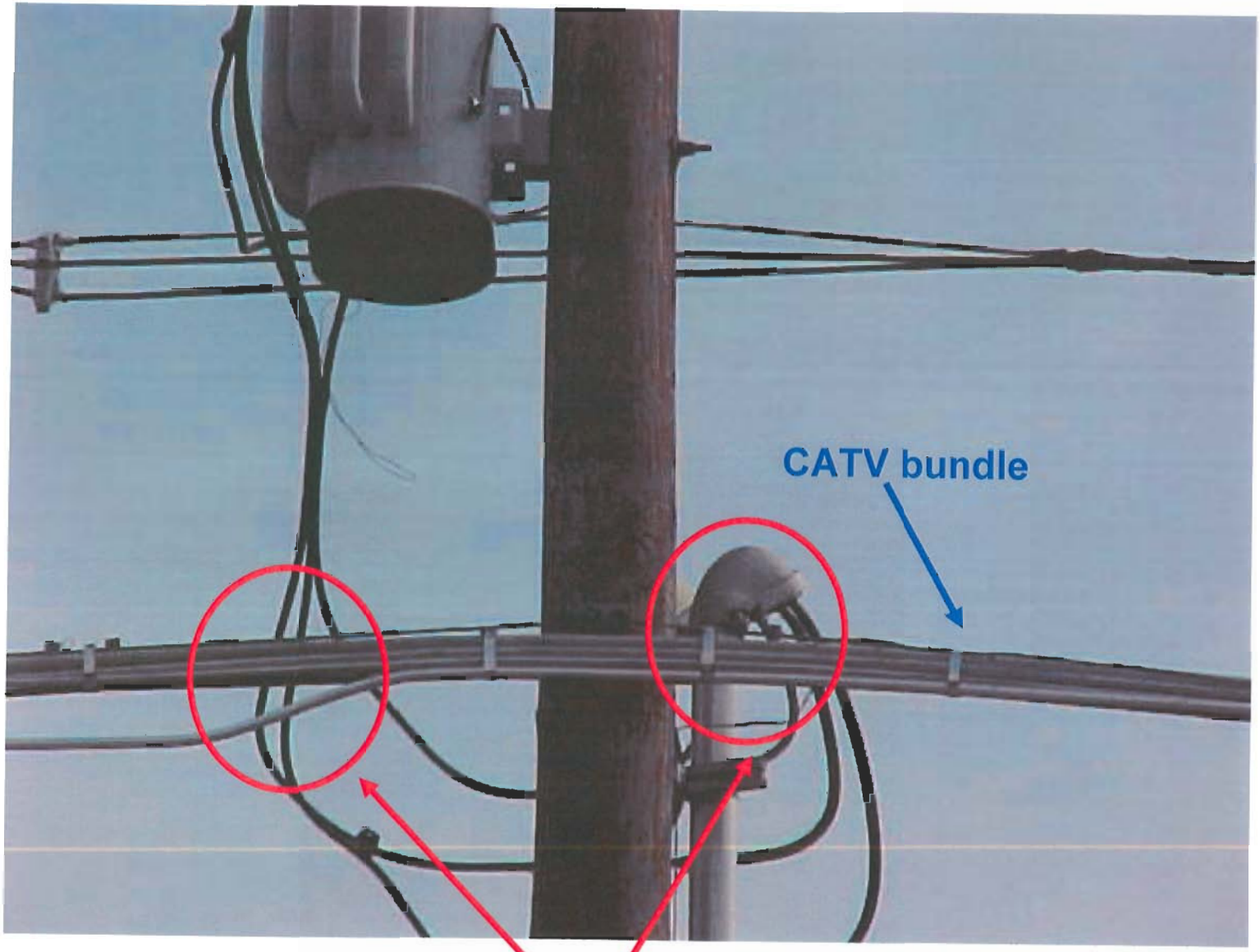

< 30” mid-span separation
= NESC violation

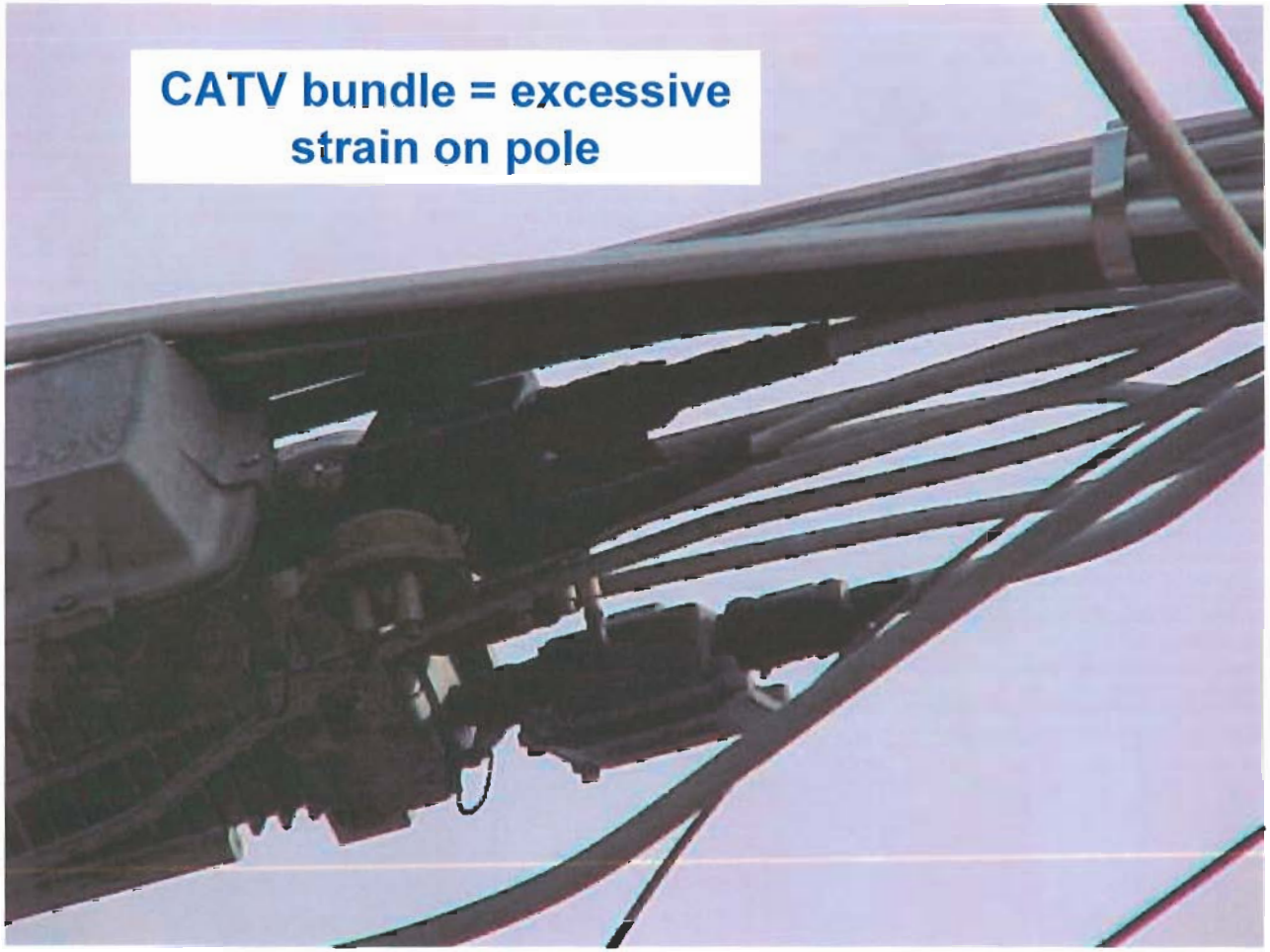

Communications wire above secondary at mid-span = NESC violation
Oncor secondary wire


Damaged Oncor
secondary overlash
needs attention
CATV overlashes without
notice to Oncor

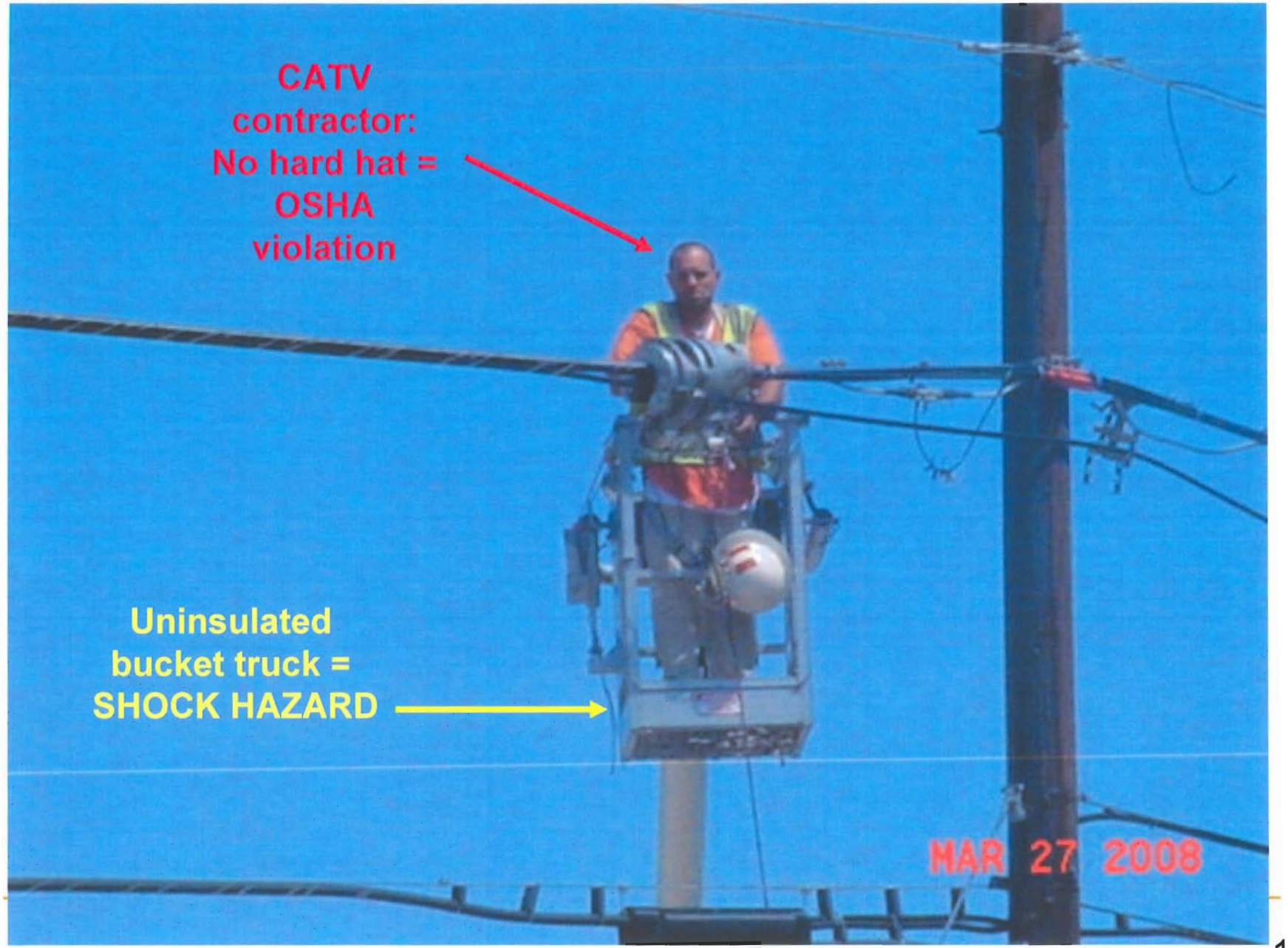

Lack of separation at mid-span
= NESC violation
CATV wire
Oncor secondary wire

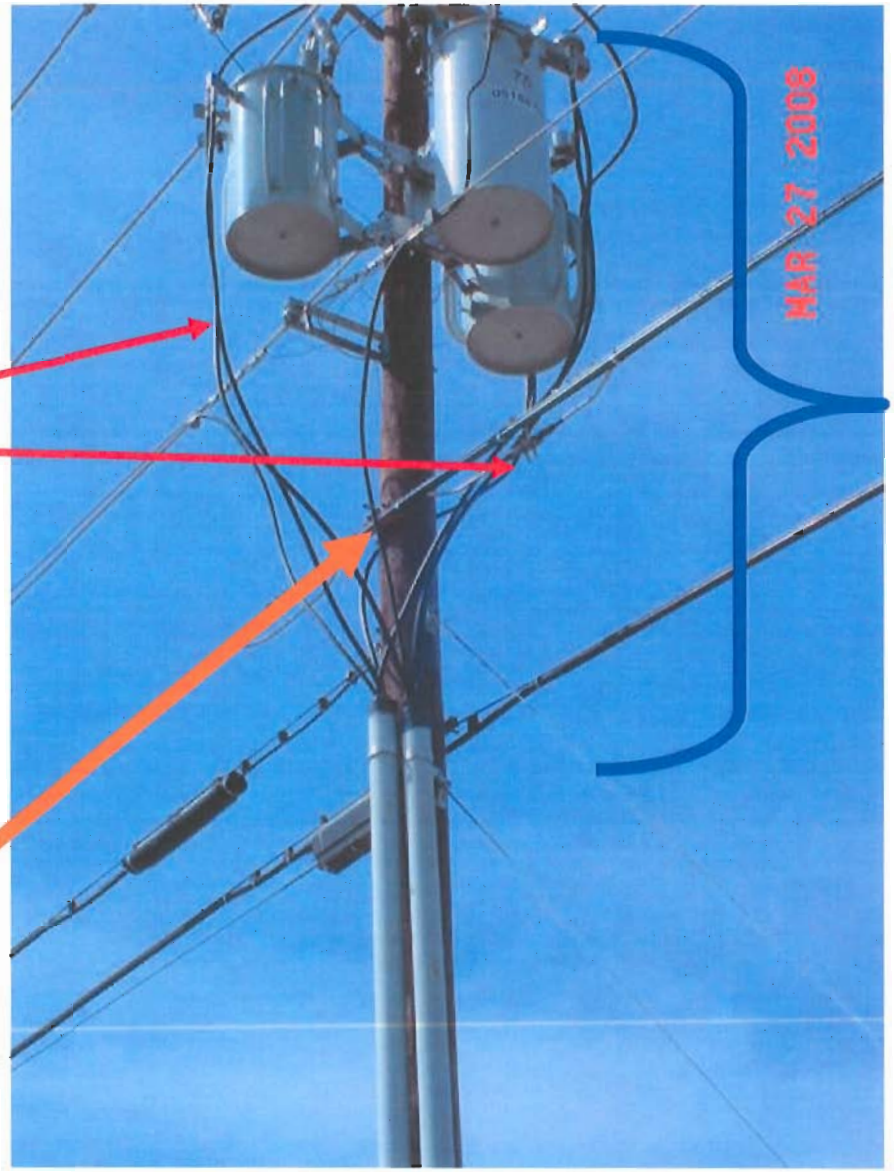
Overlashing = Real burden on pole


CATV bundle
No separation from power facilities = NESC violatoin


CATV bundle = excessive
strain on pole

Overlashing creates real safety and reliability issues


CATV
contractor:
No hard hat =
OSHA
violation
Uninsulated
bucket truck =
SHOCK HAZARD
MAR 27 2008



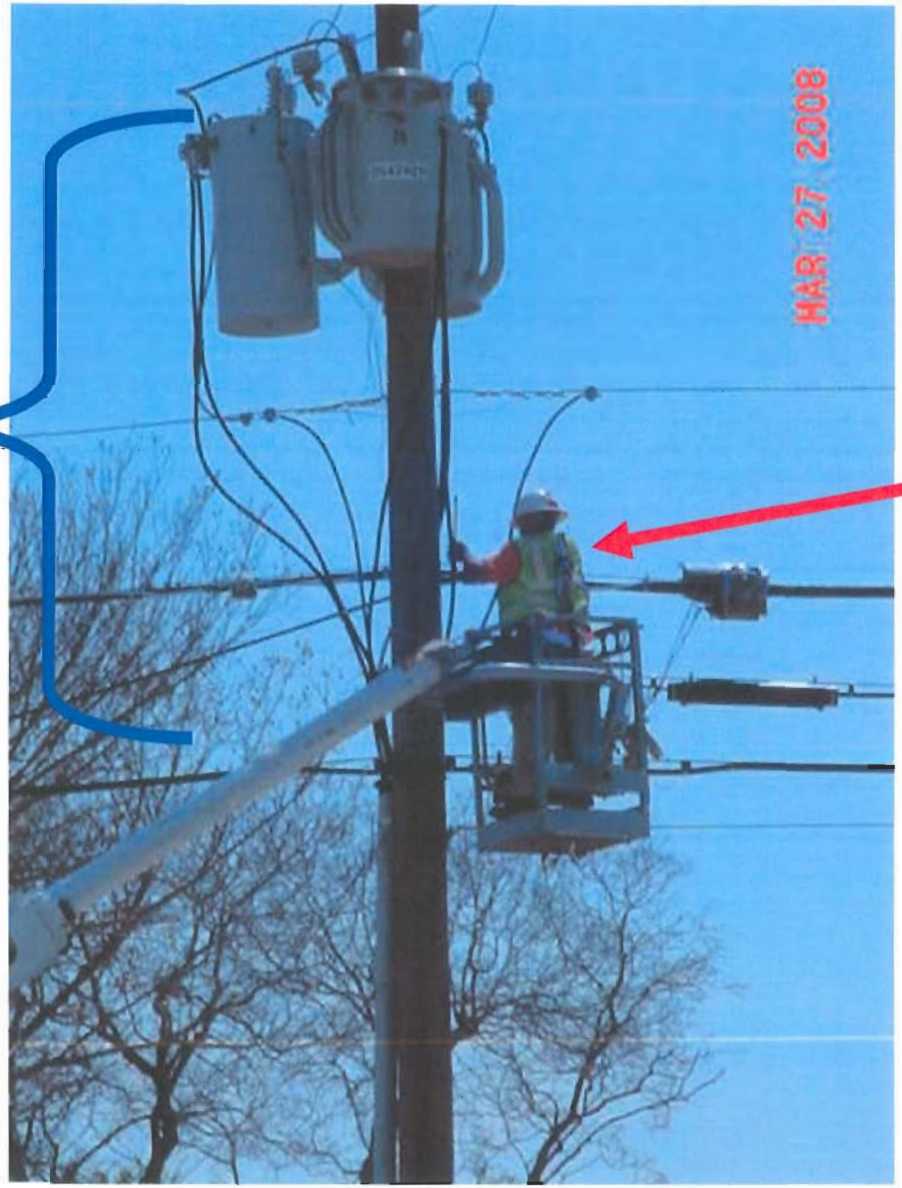
Oncor secondary lines

CATV overlash through power space

POWER SPACE

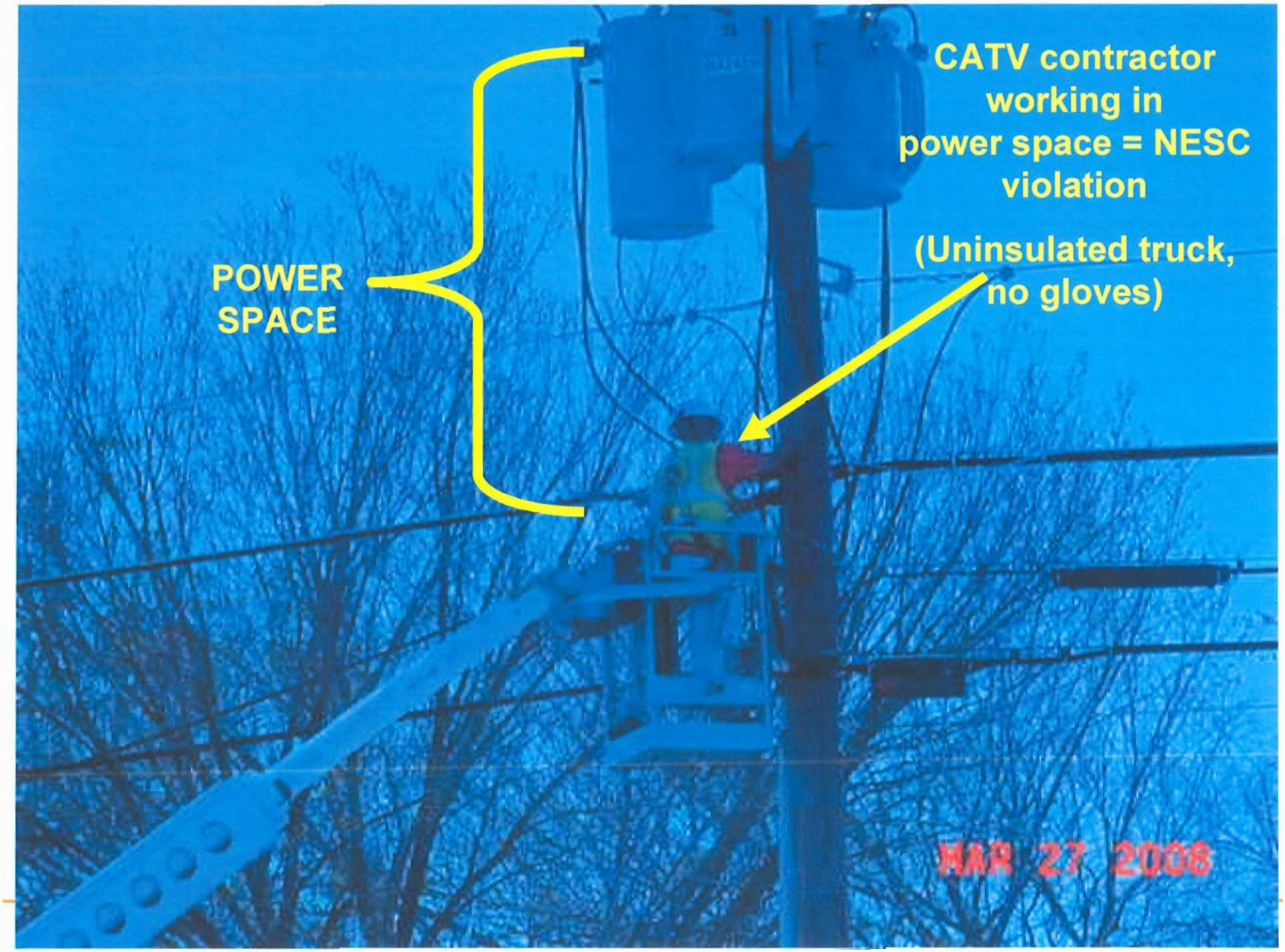

CATV contractor
entering power space =
NESC and OSHA
violation
MAR 27 2008

POWER SPACE



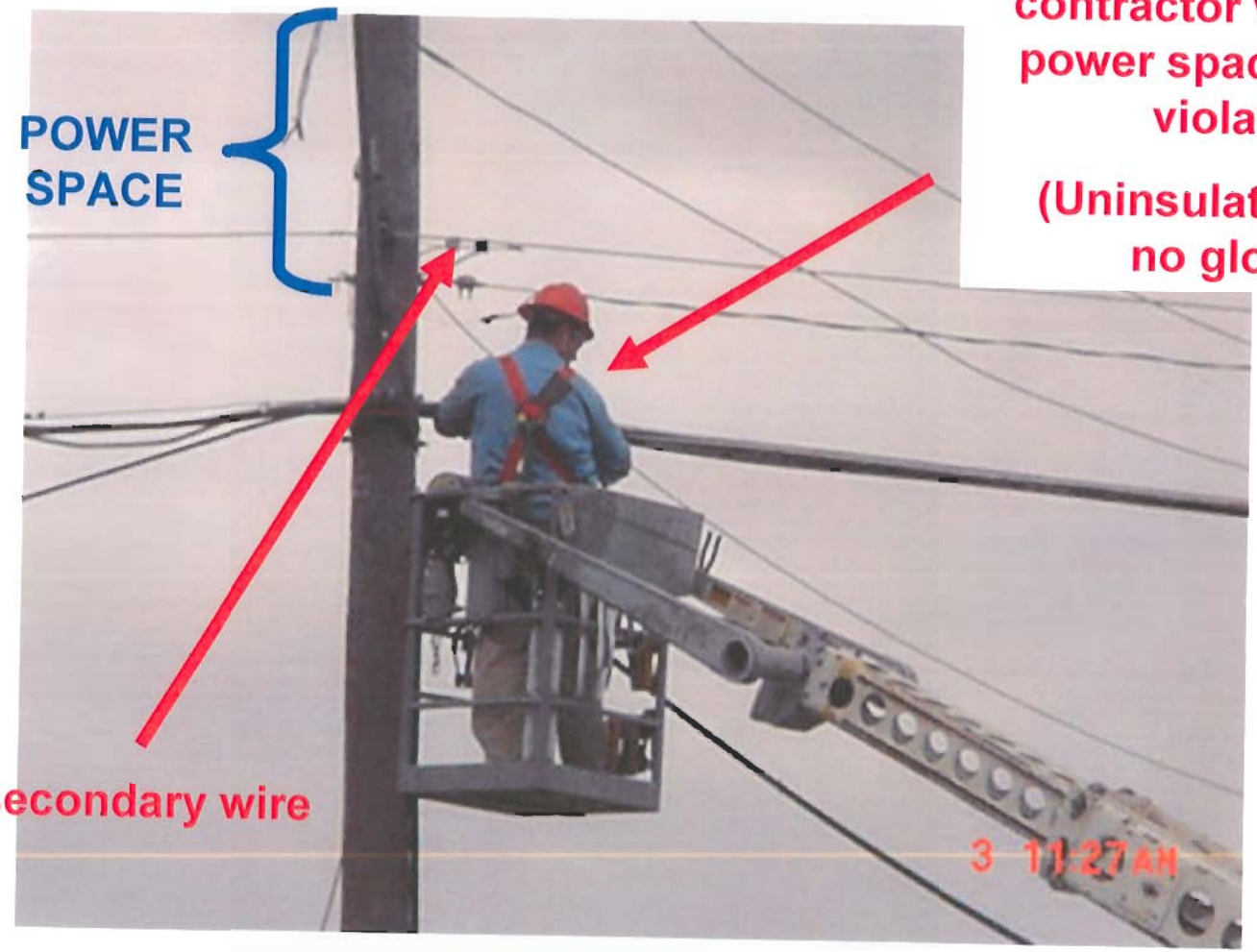
CATV contractor working in power space = NESC violation

(Uninsulated truck, no gloves)


CATV contractor working in power space = NESC violation
(Uninsulated truck, no gloves)
POWER SPACE
MAR 27 2006

Different CATV contractor working in power space = NESC violation

(Uninsulated truck, no gloves)



“Temporary” Attachments

CATV overlashing fiber at mid-span causing excessive strain on poles


Inadequate ground clearance = NESC violation


Guy wire
installed but
not anchored
Incomplete
overlash

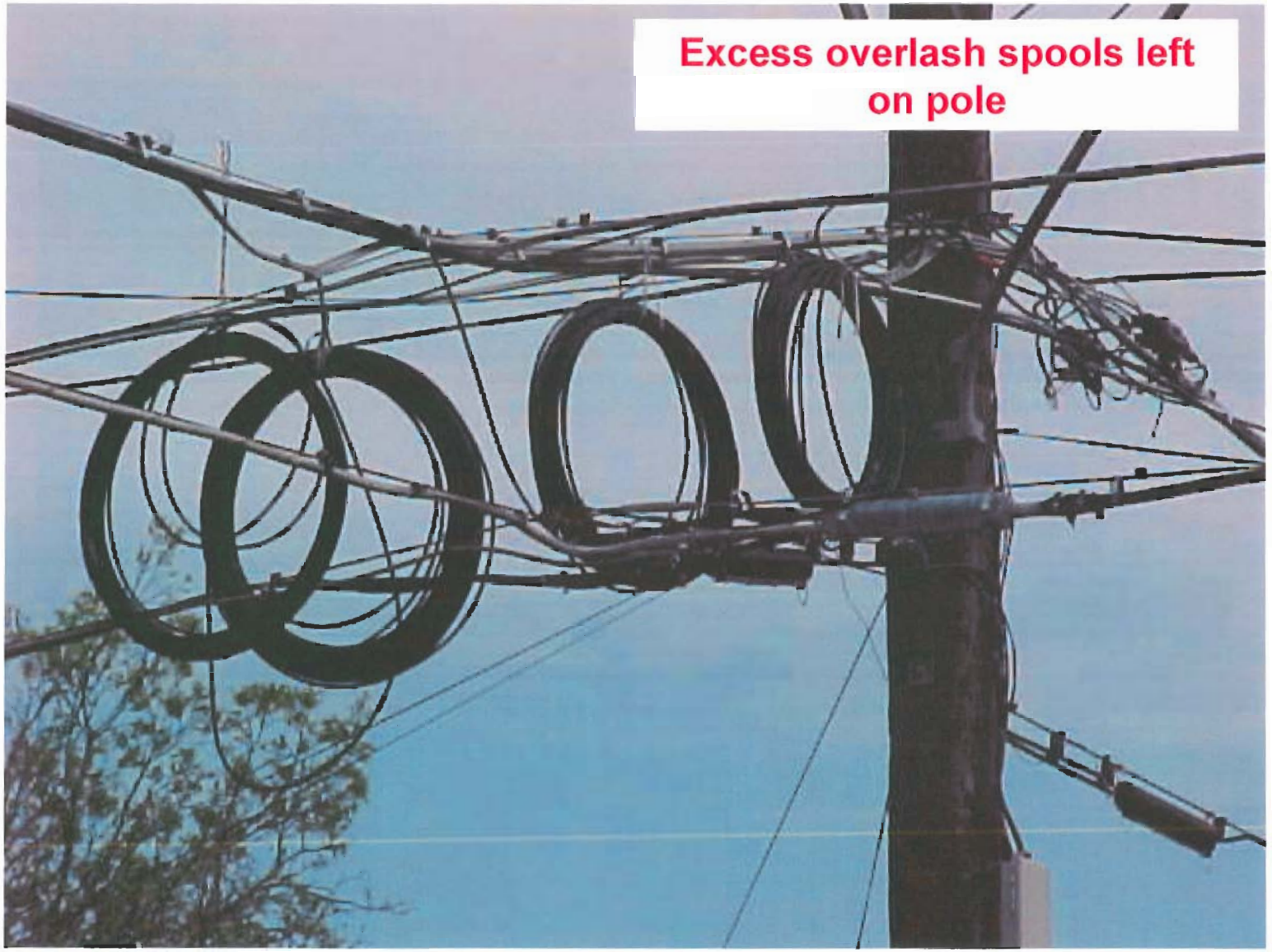
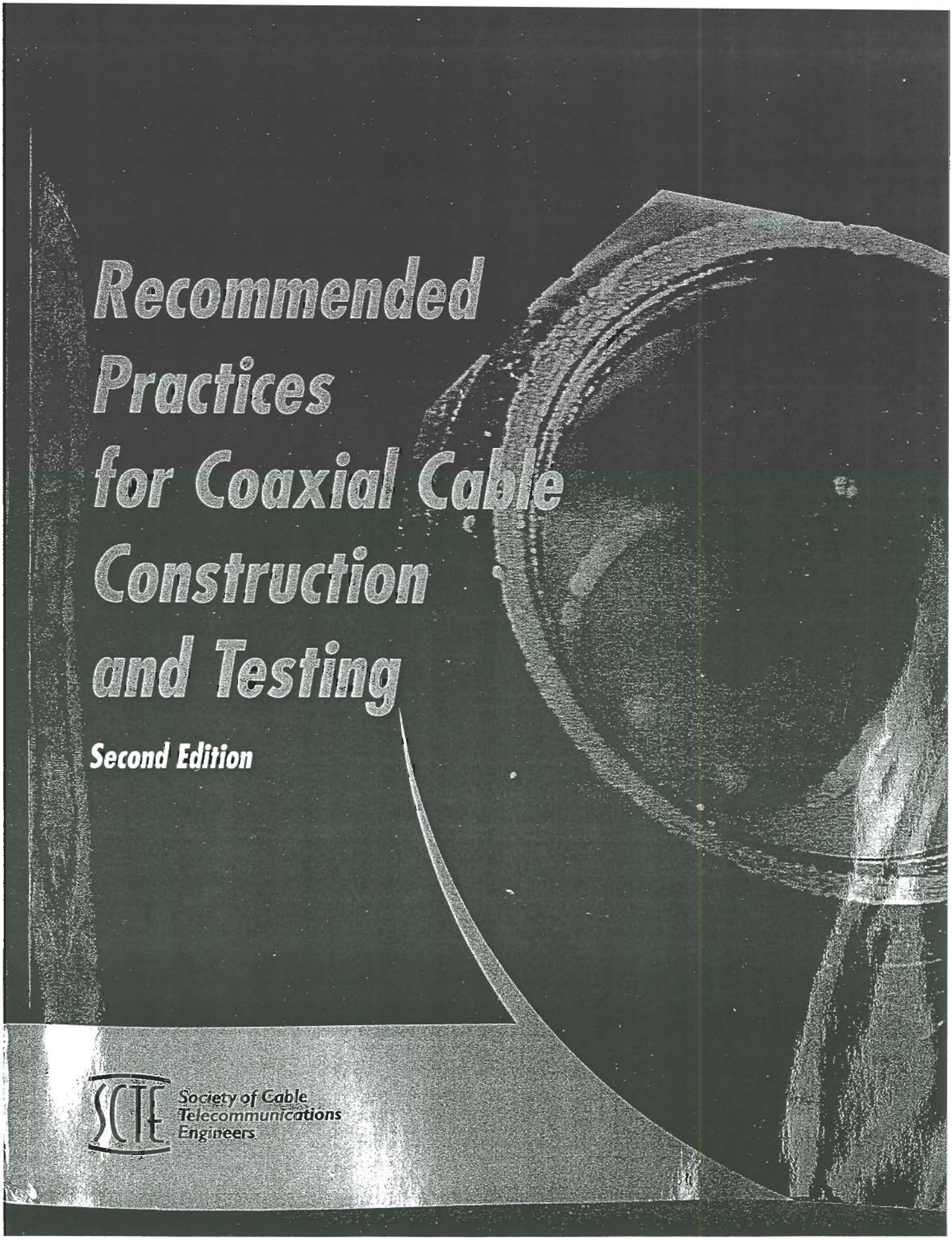

Excess overlash spools left
on pole

EXHIBIT C



Recommended Practices for Coaxial Cable Construction and Testing

Second Edition

Society of Cable Telecommunications Engineers

Recommended Practices for Coaxial Cable Construction and Testing

Second Edition

1.3.5 INSTALLATION AND TESTING OF ACTIVES

See Section 8, "Activation and Testing."

1.4 PRE-ENGINEERING

1.4.1 DRIVE-OUTS

Drive-outs should be done from the perspective of the construction contractor as well as the project manager. A drive-out of the system is recommended before construction and during design of the system. This can be done by the system construction manager.

1.4.1.1 Log Problems

Log all locations with potential problems and locations needing makeready changes on the strand maps. These could be street cuts, pole relocates, questionable rights-of-way, special concerns regarding permits, potential traffic congestion problems for the contractor, alternate routes, building entry problems, potential power problems, required tree trimming, trenching not previously noted, and route bridge crossings.

1.4.1.2 Utility Relocates

Phone line drops may be detached and reattached during construction, if permitted by the local utility company. However, costs will be incurred for the telephone company to lower main phone lines. Have these costs estimated by a representative from the telephone company. Power service lines may have to be relocated. Have these costs estimated by a representative of the power company.

1.4.1.3 Documentation

Document everything that will require time and manpower to complete. Include anything the project manager may not have planned for that will prevent the project from being completed on time and within budget.

1.4.2 EVALUATE EXISTING PLANT

Consider the condition of the existing plant. Identify bad cable strand, then repair or replace it. If an overlash is intended, will poles and/or strand support the load requirements?

1.4.3 SPLICES

Plan splice locations from design maps.

1.4.4 SPAN SAG AND TENSIONING

Verify the sag factor percentages and strand strength during the design process. Is the strand and pole strong enough to accommodate an overlash?

All pre-engineering information needs to be coordinated with the system designer and contractor.

1.5 WALKOUTS

Walkouts are recommended when there are questions about accuracy or if the information on existing maps is old. Estimate time required for walkout and coordinate with walkout crew or contractor at pre-walkout meeting.

Walkouts should be used to:

- Define the correct distance between poles.
- Define all rights-of-way.
- Point out potential hazards.
- Define optional alternate routes.
- Define utility clearance violations.

plates. Wire ends must not protrude beyond the clamp. When double-lashing or overlashing, separate the two wires by an interior washer. Tighten the nut on the washer side to secure the wire.

Lashed cable supports (straps) and plastic cable spacers should be placed 2 inches from the lashing wire clamp on the pole side of the clamp. Bell-type, saddle-type or stackable-type supports may be used. Refer to the manufacturer's recommendations for installation requirements.

Coaxial cable tails should be left at all amplifier, directional coupler and splitter locations as follows:

- Cable tails should extend a minimum of 6 feet beyond the pole.
- Output tails should be properly pulled and bent toward the input side where the equipment will be placed without "boxing in" the pole.
- Support the cable tails with lashing wire, cable support (strap) or nylon tie wrap a minimum of 6 inches from the end of the cable.
- Seal the cable ends with proper cable caps to prevent moisture ingress prior to splicing. Do not use tape to seal the cable ends.

Plastic tree guards should be placed where coaxial cables will be subject to damage (pressure, abrasion, shock) from tree limbs or other objects. Secure the tree guard with lashing wire clamps at both ends.

Properly sag all cable spans while maintaining minimum clearance distances from utility lines. Proper sag is relative to yearly temperature changes and span length.

In most cases, cable sag should be proportional to that of power. At locations where telephone plant is absent or sagged too low, the recommended sag is 1.5%-2.0% of the span length at 70°F midspan.

All suspension clamps must be tightened upon completion of the cable installation.

3.12.6 CABLE OVERLASHING

Coaxial cable overlashing is acceptable provided that the following conditions are met.

- Existing strand must be tested to assure that it is adequate for the support of the additional loads (ice, wind and temperature).
- In areas subject to ice loading special consideration must be given to assure adequate support (i.e., span lengths may have to be shortened).

3.12.7 EXPANSION LOOPS

Adequate span sag is important to maximizing expansion loop life. Where the recommended span sag of 1.5%-2.0% is not achievable, hand-forming expansion loops with a non-mechanical template (Figure 3-28) is not advisable. It is recommended that all expansion loops be formed with a mechanical bender (Figure 3-29) to prevent damage to the cable that may not be immediately apparent. However, when hand-forming expansion loops with a template, use care to avoid kinking the cable.

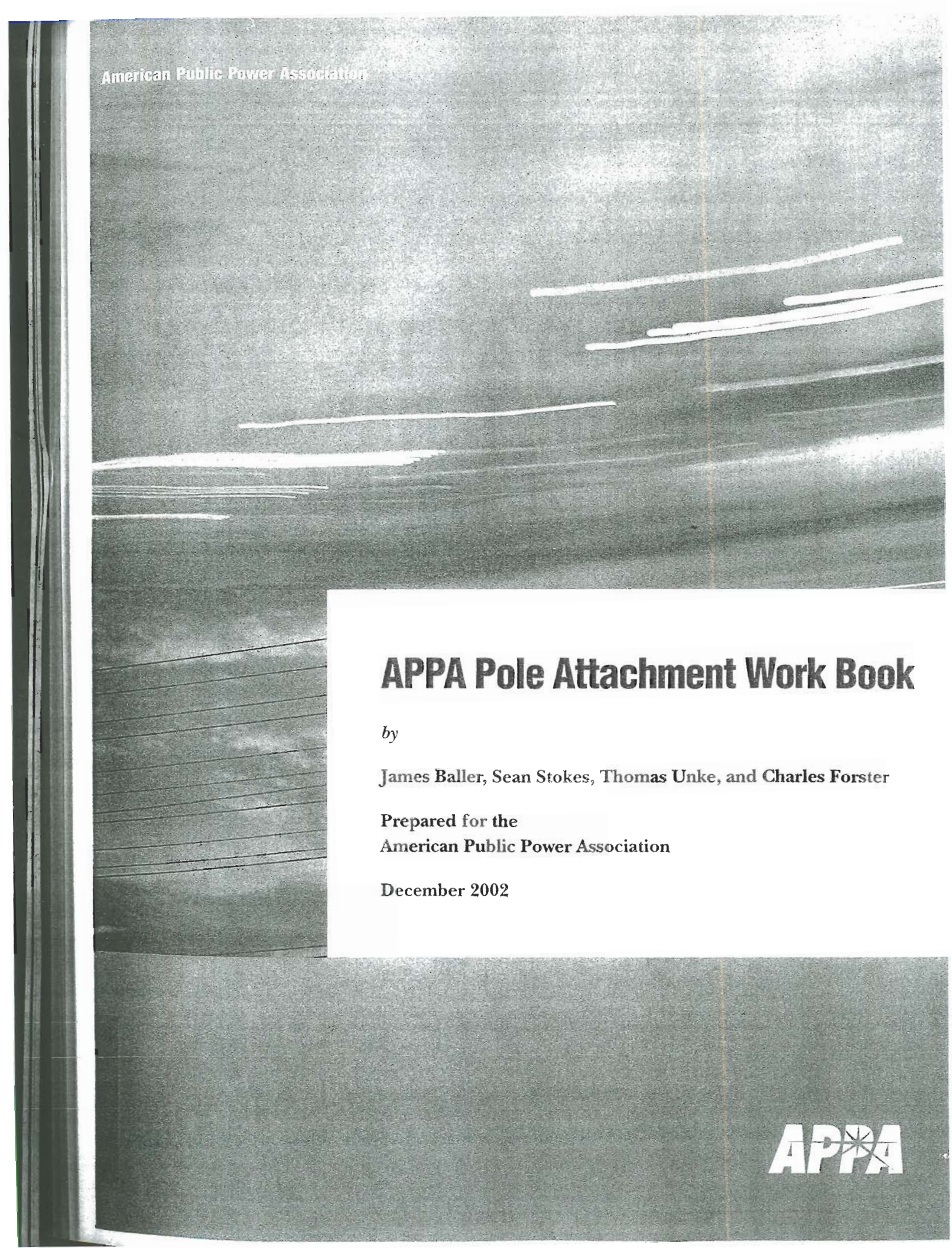
Cable diameters of .750-inch and larger must be formed with a system-approved mechanical loop forming tool. Refer to cable bender manufacturer for recommended procedures.

Place expansion loops in feeder cable at the output side of every pole.

Corners greater than 45° should have an expansion loop in .750-inch or larger cable on the next adjacent pole (or output side). Locate the loop on the opposite side of the pole from any collocated device.

At cable expansion loops, support straps should be left loose to allow for cable expansion and contraction, yet snug enough to prevent the cable from rolling upward.

EXHIBIT D



APPA Pole Attachment Work Book

by

James Baller, Sean Stokes, Thomas Unke, and Charles Forster

Prepared for the
American Public Power Association

December 2002

APPA

VI. Treatment of Overlashing

A. Permit Requirement

The Model Agreement defines an "Attachment" as follows:

> **Attachment(s):** *means Licensee's Communications Facilities that are placed directly on Utility's Poles or Overlashed onto an existing Attachment or that are placed within Utility's Conduit System, but does not include either a Riser or a service drop attached to a single Pole where Licensee has an existing Attachment on such Pole.*

Under the terms of this definition, the overlashing of existing facilities is considered a separate attachment requiring prior authorization through the permitting process. Absent such authorization, overlashing constitutes an unauthorized attachment. The rationale for treating overlashing in the same manner as other attachments, in terms of access, is that overlashing can have significant impacts on pole loading and required separations. Accordingly, entities seeking to overlash their own facilities or those of a third party should be required to submit a permit application complete with a pre-permit and post-installation surveys, and pay any necessary make-ready costs. In addition, entities seeking to overlash facilities other than their own should be required to obtain a license Agreement with the utility and written evidence of concurrence from the party whose facilities they propose to overlash.

B. Rates for Overlashing

1. Common Space

The issue of the appropriate rate for overlashing is more complex. While overlashers arguably obtain the same benefits from the common space as any other attaching party, it is not clear that an existing entity that overlashes its own attachment should be counted twice for the apportionment of the common space. For ease of administration, the Model Agreement recommends that, irrespective of the actual number of attachments that a party has on a pole, each "attaching entity" only be counted once for the apportionment of the common space. For example, an entity that overlashes a third party's existing attachment would be counted as an attaching entity